
(1995) 10 BOM CK 0007
In the Bombay High Court
Case No : Writ Petition No. 887 of 1995

Sureshchandra B. Agrawal and others	APPELLANT
Vs	
Mansukbhai H. Doshi and others	RESPONDENT

Date of Decision : 11-10-1995

Acts Referred:

Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 14, 17(1), 21, 22

Citation : AIR 1996 Bom 118 : (1996) 2 BomCR 533 : (1995) 97 BOMLR 85 : (1996) 1 MhLj 18

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Advocate : A.K. Abhyankar, for the Appellant; P.N. Shah, for the Respondent

Judgement

A.P. Shah, J.—This petition under Art. 227 of the Constitution takes exception to the order passed by the Small Causes Court, Bombay, granting notice taken out by the respondent-landlord for bringing the heirs of the deceased tenant on record.

2. The short question, which is canvassed by Mr. Abhyankar, learned counsel for the petitioner, is whether it is permissible for the Court to bring the heirs of the deceased on record where, admittedly the defendant has died prior to the suit, Mr. Abhyankar contends that the suit filed against the sole defendant, who was dead at the time of filing of the suit, is a nullity. Therefore, Mr. Abhyankar contends that the plaintiffs cannot be allowed subsequently to amend the suit and substitute legal representatives in place of the defendant. Mr. Abhyankar relies upon the judgment of this Court in Mahalu Shidappa Vs. Shankar Dadu and Others, . Mr. Abhyankar also places reliance on the judgments in Pratap Chand Mehta Vs. Krishna Devi Meuta, , C. Muttu v. Bharath Match Works AIR 1964 Mys 293 and Godavariben Himmatlal and Another Vs. Parikh Somalal and Others, . Mr. Abhyankar says that the Courts below have proceeded on an erroneous basis that such a plaint can be amended by substituting the legal heirs in places of the

deceased defendant.

3. Before I deal with the contentions raised by Mr. Abhyankar, I may mention that Mr. Shah, learned counsel for the respondents, also relied upon the judgments of some other High Courts taking a view that the heirs can be brought on record in such situation. It is not necessary to refer to those judgments, because, in my opinion, the question is no longer *res integra*, as it squarely covered by a recent decision of the Supreme Court in *Karuppaswamy and Others Vs. C. Ramamurthy*, . The Supreme Court has referred to case law bred in various High Court on the subject as to whether the suit filed against the dead person is *non est* and whether the dead person can be included and legal representatives can be added as a party to the suit. The Supreme Court has opined that the correct answer to these issues lies in the proper consideration of the provisions of S. 21 of the Limitation Act, 1963 (Section 22 of the old Limitation Act, 1908). The Supreme Court observed in paragraph 5 of the judgment:

"5. A comparative reading of the proviso to sub-sec.(1) shows that its addition has made all the difference. It is also clear that the proviso has appeared to permit correction of errors which have been committed due to a mistake made in good faith but only when the Court permits correction of such mistake. In that event its effect is not to begin from the date on which the application for the purpose was made, or from the date of permission but from the date of the suit, deeming it to have been correctly instituted on an earlier date than the date of making the application. The proviso to sub-sec.(1) of S. 21 of the Act is obviously in line with the spirit and thought of some other provisions in Part III of the Act such as S. 14 providing exclusion of time of proceeding *bona fide* in Court without jurisdiction, when computing the period of limitation for any suit, and S. 17(1) providing a different period of limitation starting when discovering a fraud or mistake instead of the commission of fraud or mistake. While invoking the beneficent proviso to sub-sec.(1) of S. 21 of the Act an averment that a mistake was made in good faith by impleading a dead defendant in the suit should be made and the Court must on proof be satisfied that the motion to include the right defendant by substitution or addition was just and proper, the mistake having occurred in good faith. The Court's satisfaction alone breaths life in the suit."

Now, therefore, the test, which is to be applied in such case, is whether the mistake in filing the suit was made in good faith or it is on account of any neglect or contumacy to the conduct of the plaintiff. If there is no neglect or lack of *bona fides* on the part of the plaintiff, such application will be liable to be granted.

4. Now let us consider the facts of the present case in the light of the decision in *Karuppaswamy and Others Vs. C. Ramamurthy*, . The plaintiffs are the trustees of the Trust known as "Vishvva Vastralaya Prayogik Sangh". They have filed the present suit on various grounds under the Bombay Rent Act including the ground that the Trust *bona fide* requires the property for its purposes. On perusal of the

record, it is seen that the Trust had sent the notice of termination to the defendant by registered post A/D before filing the suit and the acknowledgment was received back with the defendant's signature, though the defendant was not alive at the relevant time. Even the suit summons was accepted on behalf of the defendant. In these circumstances, the Trust was clearly led to believe that the defendant was alive at the time of filing of the suit. The trustee came to know about the death of the defendant only from the learned Advocate of the other side in 1983 and immediately thereafter the present application has been made for bringing the heirs on record. In my opinion, no negligence can be attributed on the part of the trustees. The Trust has prosecuted the suit bona fide and, therefore, there is no reason to interfere with the impugned order granting application for bringing the heirs on record. The petition is, therefore, dismissed. No order as to costs.

5. Petition dismissed.