

(1918) 06 BOM CK 0006

In the Bombay High Court

Case No : Civil Extraordinary Application No. 58 of 1917

Vatsalabai Vishnu Sukhtankar

APPELLANT

Vs

Sambhaji Pandurang Nabar

RESPONDENT

Date of Decision : 25-06-1918

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3

Citation : AIR 1918 Bom 100 : (1918) 20 BOMLR 902 : 47 Ind. Cas. 757

Hon'ble Judges : Shah, J; Basil Scott, J

Bench : Division Bench

Judgement

Basil Scott, Kt., C.J.—The question for decision arises with reference to the constitution of a Suit No. 205 of 1914 filed by five persons the fourth of whom was Radhabai. She died after the suit had been filed on the 10th of March 1916 and, on the 18th of April, an application was made on behalf of the minor Govind Sambhaji, son of the 1st plaintiff, that he should be brought on the record as heir and legal representative of the deceased Radhabai, relying upon an alleged adoption. The learned Judge acceded and the record was amended by the substitution of Govind Sambhaji's name for that of Radhabai. The petitioners having learnt of the application applied on the 26th of July that Govind's name should be deleted and that the minor daughters of Radhabai should be brought upon the record in his place. The learned Judge, however, after hearing the evidence adduced by the disputing parties, held that he could not alter his previous order as Rule 3 of Order XXII provides that after the record has been amended by adding the representative of the deceased plaintiff as a party the Court shall proceed with the suit.

2. It appears to us that this is taking too narrow a view of the provisions of Order XXII. Rule 5 provides that where a question arises as to whether any person is or is not the legal representative of the deceased plaintiff or the deceased defendant, such question shall be determined by the Court. The learned Judge, however, has held that he cannot determine the question.

3. Now let us consider what injustice that might work in the case of a deceased defendant. There might be a suit filed by the plaintiff against several defendants, and on the death of one of these defendants the plaintiff might apply to have some one substituted as representative who was not really the legal representative and could be relied upon not to put forward any defence on behalf of the deceased defendant's estate. This obviously might lead to grave miscarriage of justice and yet if the learned Judge's view is correct, an order once having been made for adding a bogus representative of a deceased defendant the suit must be proceeded with without any real representative of the estate being brought in even though the Court is aware that the defendant's interests would not be defended by the bogus representative. In the case of plaintiffs the danger is not so great, for plaintiffs cannot sever in their attack and all are represented by the same legal advisers and therefore one plaintiff can generally be relied upon to protect the interests of all the plaintiffs even though some have died and are represented by persons who take no interest in the proceedings. Tested, however, from the point of view which I have suggested, it is clear that it would be a very unfortunate reading of Rule 3 if we held ourselves bound to accede to the view of the learned Judge and hold that once an order, though obviously a mistaken order, has been made, it is not in the power of the Court to correct it notwithstanding the provisions of Rule 5. We cannot take that view of the case.

4. A question has arisen as to whether Govind is the legal representative of the deceased Radhabai, and such question has to be determined by the Court. We, therefore, set aside the order of the lower Court and direct it to determine the issue left undetermined upon the application of the petitioners.

5. Costs costs in the cause.