



Order Below Exh.62
(In R.C.A. No.479/2019)

1. This application is filed by Girish Surendranath Chopra for impleading him as a party Respondent and alternatively to permit him as intervenor in the Appeal.
2. Say of Appellants & Respondents was called upon. Appellants have filed say at Exh.71 and Respondent No.1(b) has filed say at Exh.66.
3. Heard Ld. Advocates for the parties. Applicant has filed written argument at Exh.77.
4. Perused record & documents produced by Applicant. Points for determination along with my findings thereon are as follows:

Sr. No.	Points	Findings
1	Whether Applicant can be added as a party or can he be permitted to intervene in the Appeal?	No
2	What Order?	Application is Rejected

:- REASONS :-

AS TO POINT NO.1:-

5. It is contention of Applicant that he is second son of deceased Respondent No.1 & 1(a) who are deceased now. As per Applicant, he is necessary party to Appeal. In the month of January-2024, he came to know about pendency of Appeal. It is further contention of Applicant that for complete adjudication



of dispute and to avoid multiplicity of litigation he be impleaded as a party and if he is not impleaded then permission be given to intervene in the Appeal.

6. When this Appeal was pending before the Hon'ble Bombay High Court, liberty was given to original Defendant No.11 to 14 to bring legal heirs & representatives of deceased Respondent No.1 on record and plaint was amended accordingly. By that order Surendranath Chopra and Vivek Chopra i.e. Respondent No.1(a) & (b) were brought on record as legal heirs & representatives. As per Applicant when he is son of Respondent No.1, he was deliberately not added as a legal heir & representative.
7. Appellants have strongly objected the application on ground that applicant has not filed heirship certificate or any documentary evidence in support of application. Respondent No.1 has not disclosed that she is having more heirs. As per Appellants, inquiry under Rule 5 Order 22 of the CPC needs to be conducted and it is prayed that inquiry be directed to the Lower Court.
8. Respondent No.1(b) has strongly objected the application contending that delay condonation application is not filed along with application and there is about 12 years delay without any explanation. As per Respondent No.1(b), present Applicant is not legal representative in respect of suit property and he has suppressed material facts.



9. It is contention of Respondent No.1(b) that Short Cause Suit No.1203/2011 & 1204/2011 were filed by Respondent No.1 & 1(a). In both suits, compromise decree was passed due to family settlement and as per consent terms, an amount of Rs.1,20,00,000/- was paid to Applicant and part of office premises bearing No.502-A, Niranjan, 99, Marine Drive, Mumbai was transferred to him in lieu of which he has agreed that he will not claim any right in the estate in present or in future, of deceased Respondent No.1 & 1(a). Deceased Surendranath Chopra i.e. Respondent No.1(a) has severed all ties with Applicant by issuing public notice dt.04/03/2014. By Will dt.08/10/2012, all movable & immovable properties including suit property has been given to him i.e. Respondent No.1(b).
10. As per Applicant, he is legal heir and representative of deceased Respondent No.1 & 1(a). To show his relation with them, Applicant has placed on record photocopy of his birth certificate and verified copy of his passport. In support of argument, Applicant has relied upon judgment of Hon'ble Supreme Court in *Jaladi Suguna (deceased) through Lrs. Vs. Satya Sai Central Trust & Ors. (MANU/SC/7614/2008)* and judgment of Hon'ble Delhi High Court in *Spreeti Satija S. Raj Kumari & Ors. (MANU/DE/0167/2014)*. I have considered these citations at the time of passing this order.
11. As per Appellants, inquiry needs to be conducted in view of Rule 5 Order 22 of CPC. Now question is in case in hand such



inquire is really required. As per proviso of Rule 5 of Order 22 of CPC, where such question about legal representatives arises before an Appellate Court, the Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question. In *Jaladi Suguna* (Supra) the Hon'ble Supreme Court in para No.11 has observed that provisions of Rule 4 & 5 of Order 22 of CPC are mandatory. If facts in that case are considered then in that matter dispute regarding legal representative was left undecided.

12. If present case is considered then Respondent No.1(b) has not disputed that Applicant is legal heir of deceased Respondent No.1 & 1(a) but what is objected by Respondent No.1(b) is that at present Applicant has no right in suit property in view of consent terms in Short Cause Suit No.1203/2011 & 1204/2011. Respondent No.1(b) has placed on record photocopy of consent terms, order of the Court, photocopy of Ration Card, photocopy of passport of deceased Respondent No.1 & 1(a), his passport & passport of Applicant, photocopy of public notice etc.
13. From documents placed on record, it becomes clear that Applicant is legal heir of deceased Respondent No.1 & 1(a). Deceased Respondent No.1(a) had served ties with Applicant. If observations of Hon'ble Delhi High Court in *Preeti Satija*



(Supra) are considered then it is clear that even if ties are severed, legal right do not extinguish. This judgment is on Domestic Violence Act, 2005.

14. As stated earlier, Applicant has been accepted as legal heir of Respondent No.1 & 1(a) by Respondent No.1(b) therefore, there is no need to conduct inquiry under Rule 5 of Order 22 of CPC. If documents placed on record by Respondent No.1(b) are considered then it becomes clear that in para 3 of consent terms in Short Cause Suit No.1204/2011 present Applicant has admitted that he shall have no right, title & interest and/or claim of whatsoever nature in the estate of Respondent No.1(a) in his lifetime or thereafter. Consent terms shows that Rs.1,20,00,000/- were paid by way of two demand drafts to him by Respondent No.1(a). Consent terms in Short Cause Suit No.1203/2011 also shows that certain portion of property bearing No.502-A, Niranjana, 99, Marine Drive, Mumbai has been given to present Applicant.
15. Applicant in his application has not brought on record facts about consent decree and has suppressed these facts from the Court. No doubt, in written arguments Applicant has mentioned about these facts, but it is afterthought when Respondent No.1(b) has brought these facts on record. It appears that Application is filed with malafide intention. Applicant has not come with clean hands before the Court. Conduct of a party has to be seen while granting any relief and any party approaching the Court with unclean hands or at



belated stage or is guilty of laches, then such party not entitled to any relief.

16. After considering facts & documents on record, it becomes clear that Applicant has not given proper details about facts in his application. He has not given reasons for inordinate delay for filing this application. He has not given details as to from whom he got knowledge about pendency of Appeal. No doubt, in view of Sub Rule 2 Rule 10 Order I of CPC, the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added but facts on record shows that present Applicant, by consent terms has relinquished his rights, title & interest in property of Respondent No.1(a).
17. Thus, presence of present Applicant, in view of Sub-Rule 2 Rule 10 Order I of CPC, is not necessary for effectual & complete adjudication of Appeal therefore, there is no need to implead Applicant as party Respondent. So also, Applicant cannot be permitted to intervene in the Appeal for aforesaid reasons.



Application is devoid of merit and is liable to be rejected. As a result, I pass following order.

:: ORDER ::

Application is rejected.

Panvel
Date: - 25/04/2024

(S. C. Shinde)
District Judge-3, Panvel
Dist.-Raigad