



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 4057 OF 2018
IN
FIRST APPEAL NO. 755 OF 1988

Phool Singh S/O Surajpal Singh

...Applicant/ Ori.
Respondent No.7

In the matter between:

Prahladsingh s/o Bachusing (since deceased)
through its legal heirs and Ors.

...Appellants

Versus

Bhuridevi Chandmal Lodha and Ors.

...Respondents

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Mr. Akshay Deshmukh a/w Sumit Chaudhari for the Applicant.
Mr. Vishal Pattabiraman i/b Amey Sawant for Respondent Nos. 1(a) and
1(b).
Ms. Poonam Madhwani a/w Ms. Anjali Devkar for the Appellants.

CORAM : M.M. SATHAYE, J.
DATE : 22 JULY 2025.

PC. :

1. This is an application by Phoolsingh s/o Surajpalsingh seeking impleadment in present appeal as party Respondent and for stay of appeal.
2. Present appeal is arising out of Suit No.3227 of 1982 which is hereinafter referred to as present suit. The Suit No.6232 of 1964 filed amongst the family members of Dattadin is hereinafter referred to as 1964 suit.
3. The case of the Applicant is that as per genealogy annexed to



the application, Applicant is claiming through the branch of Surajpalsingh, who was brother of original appellant Pralhadsingh. Presently two sons of Prahladsingh namely Dharmaveer-singh and Dharmapal-singh are prosecuting the present appeal after the death of Prahlad-singh. It is the case of the Applicant that one Dattadin Harpal Singh (hereinafter referred to as 'Dattadin' for short) was the owner of present subject matter property at Kanheri, Carter Road, Borivali East. The Applicant is grandson of Sukharana-devi - sister of Dattadin, just like the present Appellant Dharamavir and Dharmapal Singh and therefore he or his branch should have been made party. It is submitted that in 1964 suit amongst family members, right of Applicant's branch has been accepted. Therefore the Applicant was necessary party in the present suit and this appeal.

4. Affidavit in reply is filed by Dharamveer-singh s/o Prahlad-singh, contending *inter alia* that the Applicant has no *locus standi* to be joined as party. That the Applicant had taken out Civil Application No.7773 of 2004 initially for joining as party and same was dismissed for default on 29.07.2004. That he again took out Civil Application St. No. 23585 of 2014, which was withdrawn by him. It is contended that if the Applicant wishes to challenge the title of Appellant on the ground of being co-owner, he has to take out independent proceedings. That if the Applicant had any right in the suit property, he would not have kept quiet since 1964 suit.

5. The Applicant has filed affidavit-in-rejoinder dated 19.08.2015 asserting *inter alia* that the Applicant is one of the co-owners of the suit property and also the legal heir of Dattadin, through whom the present Appellants are also claiming rights. No sur-rejoinder is filed till date.



6. Though it is admitted that earlier application CA/7773/2024 for joining as party came to be dismissed for default, it is contended that subsequent Civil Application (Stamp) No.23585 of 2014 came to be withdrawn with liberty and therefore, the present application being filed by virtue of said liberty is not barred. No material is shown to the Court to discredit this assertion about earlier application being withdrawn with liberty.

7. It is specifically submitted that the Applicant is not challenging the title of the present Appellants as they are also co-owners.

8. Learned counsel for Respondent No. 1(a) and 1(b) submitted on instructions that he does not wish to file separate reply to the Application. He has assisted the Court with the record but has left the dispute between family to be fought *inter-se*.

9. Heard learned advocates for the parties. Perused the record.

10. At the outset, it is material to note that the original Plaintiff Bhuridevi Chandmal Lodha had filed present suit against Gayadin-singh, Baijnath-singh, Khatripal-singh and Pralhad-singh. This Pralhad-singh (Defendant No.2) was son of Sukhranadevi who was sister of Dattadin. It is material to note that none of the other brothers of Pralhad-singh (namely Surajpal-singh and Ramchandra-singh) were made party to the present suit and Pralhad-singh alone represented on behalf Dattadin.

11. Dattadin was not married and he died on 26.02.1961 and after his death, his three cousins (Gayadin-singh, Baijnath-singh and



Khatripal-singh) filed 1964 suit in Bombay City Civil Court joining Prahladsingh as party Defendant. This suit was between cousins of Dattadin on one side and heir of Dattadin through her sister Sukharanadevi on the other. Gayadin-singh, Baijnath-singh and Khatripal-singh claimed that after the death of Dattadin, they had become entitled to the subject matter property. In this suit Prahlad-singh filed written statement wherein, it was asserted that Prahlad-singh along with his two brothers namely Surajpal-singh and Ramchandra-singh were legal heirs and representative of Dattadin and they were in possession of the suit property. Since this is a property claimed from Dattadin, it is the contention of the Applicant that all the legal heirs of Sukharanadevi are necessary parties because the claim is through Dattadin.

12. In the present impugned judgment and decree, Plaintiff Bhuridevi has been declared as owner of subject matter property and therefore, the declaration as on today is challenged only by Defendant No.2 Pralhad Singh and not by any other parties in the family, because they were not made parties.

13. A letter dated 12.05.2012 addressed by Advocate on behalf of a Appellants and the present Applicant together is placed on record in which request was made to furnish names and particulars of legal heirs of late Shri. Chandmal Lodha (husband of plaintiff) for furnishing to this Court in the present Appeal.

14. A copy of written statement filed by Pralhad-singh in 1964 suit is produced on record. It is seen from para 9 thereof that Prahladsingh contended that he and his 2 brothers Surajpal-singh and Ramchandra-



singh are sons of Shukrandevi-Sister of Dattadin. Dattadin is stated to have not married. A panchnama drawn by Talathi, Borivali which was part of 1964 suit is produced which indicates that after the death of Dattadin, the names of Pralhad-singh, Surajpal-singh and Ramchandra-singh are stated as 3 persons present as heirs of Dattadin. It is stated in the said panchnama that rents of 2 chawls present on the suit property is being collected by all 3 brothers. 7/12 extract pertaining to suit property also bears the names of Applicant's father Surajpal-singh.

15. Since the Applicant is not party to present suit, any order passed in this appeal will not bind him or for that matter any body from the branch of brothers Surajpal-singh and Ramchandra-singh.

16. In 1964 suit, issue as to whether Pralhad-singh and his two brothers Surajpal-singh and Ramchandra-singh are entitled to suit property as legal heirs of Dattadin has been answered in affirmative under issue nos. 7 & 8. This adjudication is not shown to have been set aside as between the Pralhad-singh and his brothers Surajpal-singh and Ramchandra-singh. Plaintiff in the present suit – Bhuridevi has only sued Pralhadsingh but as between family, all the three brothers – Pralhadsingh, Surajpal-singh and Ramchandra-singh have rights in suit property as adjudicated in 1964 suit. This right is also a right to defend any action in respect of suit property, which is an action brought by Plaintiff – Bhuridevi.

17. Therefore in the facts and circumstances narrated above, in my view the Applicant has a right to defend the present suit, which has been jeopardized and prejudiced by the declaration granted in favour of the plaintiff Bhuridevi, because the Applicant and his father was not



made party.

18. When the relationship is not disputed, the opposition of Appellant Pralhad-singh or his heirs to implead Applicant can not be accepted, especially in the teeth of adjudication in 1964 suit and when Applicant is not disputing their co-ownership.

19. Therefore, the Applicant is both necessary and proper party. The Application is accordingly partly allowed. The Applicant is permitted to be made party Respondent in appeal. It is clarified that Applicant is not challenging the title of the present Appellant or his legal heirs as they are also co-owners. All the disputes *inter se* the Appellants and Applicant are kept open.

20. Appellant is directed to implead the Applicant as party Respondent No. 7. Amendment to be carried out within 2 weeks.

21. Civil Application is disposed of in above terms.

(M.M. SATHAYE, J.)