

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

5 WRIT PETITION NO. 9288 OF 2014

VISHNU ASARAM KANADE AND OTHERS

VERSUS

VISHAL VISHNU KANADE AND ANOTHER

...

Advocate for Petitioners : Mr. Latange V.P

Advocate for Respondents 1 and 2: Mr. H. V. Tungar

CORAM : V. K. JADHAV, J.

DATE : 15th January, 2016

PER COURT :

1. Heard finally with the consent of the parties at admission stage.

2. The petitioners original defendants, by way of filing this writ petition, challenged the order dated 04.05.2013 passed by the trial Court below Exh.6-D in Regular Civil Suit No. 413/2013.

3. Learned counsel for the petitioners/defendants submits that the impugned order came to be passed by the trial Court without giving opportunity of being heard to the petitioners/defendants. The learned counsel further submits that the application came to be filed under Order 32 Rule 3(1) of the Civil Procedure Code. The application is filed for the minor plaintiffs and therefore,

provisions of Order 32 Rule 3(1) of the Civil Procedure Code cannot be made applicable.

4. Learned counsel for the respondents/plaintiffs submits that the order impugned is proper, correct and legal and the only mistake apparent on the face of the application at Exh.6-D that the application was submitted by quoting wrong Rule of Order 32. The learned counsel submits that the application is maintainable under Order 32 Rule 1 of the Civil Procedure Code and learned Judge of the trial Court has rightly allowed the same.

5. It appears that the Suit is instituted on behalf of minor plaintiffs by their maternal grandfather. I find no error in the order passed by the learned trial Court. The order came to be passed in view of Order 32 Rule 1 of the Civil procedure Code. There is no substance in the writ petition and the same is liable to be dismissed.

6. Hence the writ petition is dismissed. In the circumstances no order as to costs.

(V. K. JADHAV, J.)

JPC