

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.667 OF 2016

Gangadhar S/o Piraji Baddewad and others

Petitioners

Versus

Ramesh S/o Piraji Baddewad
died through LRs: Sunita w/o Ramesh Baddewad
and others

Respondents

Mr.U.B. Bilolikar advocate for the petitioners

CORAM : ***R.M. BORDE, J***

(Dated : 28th MARCH, 2016.)

PER COURT :-

1 The petitioners are taking exception to the order passed by the Civil Judge, Junior Division, Mukhed on 2.9.2015, below Exh.1 in R.C.S.No.77/2009, directing the plaintiff to take necessary steps against dependent Nos.4 and 5 to ensure service of summons on them.

2 Learned Judge, after the suit was prescribed for Judgment, noticed that, in fact the defendant Nos.2 and 5 were neither served with the suit summons, nor have they been reported by either of the parties to be dead. However, during pendency of the

Suit, an order of abatement came to be passed against defendants No.4 and 5 on 27.3.2012. Noticing the fact that the concerned defendants were not at all served, nor they are reported to be dead, the learned Trial Judge has invoked the provisions of section 151 of the Civil Procedure Code and directed plaintiffs to take steps in respect of service on the defendant Nos. 4 and 5.

3 I do not find anything unreasonable in exercise of inherent powers by the learned Civil Court in the facts and circumstances of the case. The inherent powers are invoked to prevent manifest injustice and to undo the effect of an erroneous order passed during pendency of the Suit. I am of the opinion that the learned Civil Judge, Junior Division, while exercising inherent powers, has merely prevented failure of justice being caused and as such, the order passed by the Trial Judge needs to be upheld.

4 Reliance is placed on the Judgment in case of ***Smt. Jayalaxmi Janardhan Walawalkar & others versus Lalchand Laxmichand Kapasi & others*** reported in 1998 (4) Bom. C.R. 665 by the petitioner, contending that, exercise of powers under section 151 by the trial Court was erroneous and beyond the purview of his jurisdiction. The facts involved in the

aforesaid matter are totally different and as such the Judgment cited, is not applicable to the instant case.

4 There is no merit in the petition. The Writ petition stands rejected.

(R.M.BORDE, J)

vbd