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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2843 OF 2016

Bharat s/o Raosaheb Bandgar (Patil)
Age: 62 years, Occ: Agri.,
R/o. Sindhphal, Tq. Tuljapur,
Dist. Osmanabad. ..PETITIONER

VERSUS

1. Kisan s/o Bajirao Kadam
(Parmeshwar),
Age: 66 years, Occ: Agri.,
& Pujari, R/o. Tuljapur,
Tq. Tuljapur, Dist. Osmanabad.
2. Sunil s/o Manik Bandgar,
Age: 25 years, Occ: Agri.,
R/o. Sindhphal, Tq. Tuljapur,
Dist. Osmanabad.
3. Anil s/o Manik Bandgar,
Age: 22 years, Occ: Agri.,
R/o. Sindhphal, Tq. Tuljapur,
Dist. Osmanabad.
4. Khandu s/o Manik Bandgar,
Age: 18 years, Occ: Agri.,
R/o. Sindhphal, Tq. Tuljapur,
Dist. Osmanabad. ..RESPONDENTS

Mr K.K. Kulkarni, Advocate for petitioner;
Mr V.C. Solse, Advocate for respondent No.1

CORAM : NITIN W. SAMBRE, J.

DATE : 18th SEPTEMBER, 2017

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ORAL ORDER :

The petitioner-defendant No.1 objected the claim for impleadment of the legal heirs moved by the plaintiff vide Exhibit-53 on the ground that all legal representatives are not brought on record, which application came to be allowed by the Court below vide impugned order dated 21st October, 2015. As such, this petition.

2. The order impugned is question on the grounds that (a) the definition of 'legal representatives' under sub section (11) of Section 2 of the Code of Civil Procedure is inclusive and as such, all the legal heirs are included irrespective of their such status, qua the cause of involvement in the suit and (b) the provisions of Order 22 Rule 4 and 5 of the Code of Civil Procedure contemplates that if status as legal heir is denied, the Court should conduct an enquiry in the matter.

3. Mr. Solshe, learned Counsel for respondent

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No.1 i.e. original plaintiff opposed the claim on the ground that the petition is preferred by defendant No.1, whereas the plaintiff has rightly prayed for bringing on legal heirs of deceased defendant No.2 on record. According to him, under the scheme of Order 22 of the Code of Civil Procedure, it is not open for defendant No.1 to raise an issue which is purely between the plaintiff and the concerned legal heirs. He would then urge that no pleadings to that effect are demonstrated nor status of the proposed legal representatives is disputed, as such, the order does not call for any interference.

4. Considered rival submissions. Provisions of sub section (11) of Section 2 of the Code of Civil Procedure defines 'legal representatives' and such definition is inclusive definition. However, while plain reading of the said definition makes it clear that 'legal representative' means a person, who in law, represents the estate of the deceased person, which includes a person who intermeddles

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with the estate of the deceased. In a suit by a party either himself or through its representative, a person on whom estate devolves on the death of such party can also be termed as legal representative. Order 22 of the Code of Civil Procedure further provides for procedure to be followed while bringing such legal representative on record.

5. Plain reading of the said provision depicts that the legal heirs in whom estate of the deceased devolves on his death or such legal heirs who represents the estate can be termed as legal representative. A legal representative may not be necessarily to be a legal heir but converse is true.

6. In such eventuality, the plaintiff, in the present case, moved an application for bringing legal heirs of original defendant No.2 on record, which came to be allowed by the impugned order. Though Order 22 of the Code of Civil Procedure

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contemplates that in case of dispute about status as legal representative, the power vests with same Court to to conduct enquiry and record findings on the issue of such dispute being raised as regards status of legal representative. However, once the plaintiff while bringing legal representatives of the defendant No.2 on record notices that there are legal heirs in whom the property devolves or who represents the interest of the deceased over the suit property, may bring such legal representatives on record and it is not mandate of law that all the legal heirs must be brought on record. The aforesaid proposition is drawn from the plain reading of sub section (11) of Section 2 read with Order 22 Rule 4 and 5 of the Code of Civil Procedure, particularly in the backdrop of fact that it is for the plaintiff to establish that he intend to have a executable decree against such person in whom the property of the deceased devolves or the property is represented by such legal heir only.

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7. In the aforesaid background, in absence of mandate that all the legal heirs must be brought on record, the support drawn by learned Counsel for the petitioner from the judgment of this Court in the matter of **Smt. Indira Vinayak Sawant and others vs Vijayendra Umakant Shety and others** reported in **A.I.R. 2007 Bombay 87**, particularly paragraphs-10 and 11 thereof, will be of hardly any assistance.

8. Apart from above, the fact remains that such legal representatives who are proposed and brought on record at the behest of plaintiff, no dispute about their such status was raised being legal representatives of the deceased. In such eventuality, in my opinion, even enquiry as is provided and observed in the judgment of Apex Court in the matter of **Karedia Parthasaradhi vs Gangula Ramanamma (D) through L.Rs. and others** reported in **A.I.R. 2015 SC 891**, which is relied upon by learned Counsel for the petitioner, will be of hardly any consequences. In the given facts of this case, such enquiry is not warranted.

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9. In view of above, no case for interference is made out in extraordinary writ jurisdiction. As such, the petition fails and stands dismissed.

(NITIN W. SAMBRE, J.)

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