

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8090 OF 2017

MURLIDHAR KHIMANDAS RIJHWANI DIED LRS
VERSUS
RAMAVTAR SAGARMAL SABOO AND ANOTHER

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Advocate for Petitioners : Shri Naik Santosh S.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: September 11, 2017

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PER COURT :-

1. The petitioners are aggrieved by the order dated 3.9.2016, challenged in this petition filed on 19.4.2017, by which, application Exhibit 25, filed by the petitioners under Order VII Rule 11 of the Code of Civil Procedure (CPC) has been rejected and they have been arrayed as defendants pursuant to the demise of the original defendant Murlidhar.

2. I have considered the strenuous submissions of the petitioners and have gone through the grounds formulated in the petition.

3. The petitioners' contention is that the Special Civil Suit

No.92 of 2013 was instituted by the plaintiff for seeking recovery of amount of the loan, which was obtained by the father of the petitioners. It was a personal loan. The petitioners are unaware as regards the purpose for which the loan was taken. The petitioners are unaware, whether the said loan amount was used for the family affairs or for investing in the property, which the petitioners have inherited after the demise of the father.

4. It is, therefore, contended that when the plaint does not make out any cause of action against the petitioners and when the cause of action dies with the demise of the original defendant, the plaint can be rejected under Order VII Rule 11 of the CPC.

5. I find that the trial Court has rejected Exhibit 25 for the reason that the issue as to whether the personal loan taken by deceased Murlidhar was for investing the said amount in any property or for the family purposes, has to be gone into. There is no dispute that the petitioners are the legal heirs of deceased Murlidhar.

6. Section 2(11) defines a legal representative to mean a person who in law, represents the estate of the deceased person

and includes any person who intermeddles with such estate. It could also include a person on whom the estate devolves on the death of the party, who is suing or is sued.

7. Considering the above, in my view, the impugned order cannot be termed as being perverse or erroneous. Merely because a different view is possible cannot be a ground for causing interference. The trial Court has to consider as to whether the amount which the deceased Murlidhar was to repay, could be recovered, keeping in view, the properties / assets inherited by these petitioners. This aspect requires recording of evidence and thereafter, the trial Court would be better assisted in deciding the said suit.

8. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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