

(1)

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

**CIVIL APPLICATION NO.10387 OF 2016
IN
CIVIL APPLICATION NO.1053 OF 2012
IN
SECOND APPEAL (ST.) NO.27711 OF 2011**

Indroba s/o Dattrao Kaldate,
now died, through L.Rs.
Smt. Muktabai w/o Indroba Kaldate & ors. ..APPLICANTS

VERSUS

Murlidhar s/o Shamrao Kaldate & ors. ..RESPONDENTS

Mr M. P. Kale, Advocate for applicants;
Mr D. V. Katneshwarkar, Advocate for respondent Nos.1 to 6;
Mr J. M. Murkute, Advocate for respondent No.7

CORAM : N.W. SAMBRE, J.

DATE : 23rd June, 2017

ORAL ORDER

Leave to amend. Legal representatives of respondent No.3 be added as party respondents.

2. By an order dated 12th June, 2015, this Court had remanded the matter back to the learned Trial Court with a direction to conduct an enquiry pursuant to the provisions of Order XXII, Rule 5 of the Code of Civil Procedure in regard to legal representatives of the deceased Indroba.

3. The learned Trial Judge conducted an enquiry and passed reasoned order on 2nd December, 2015, which is questioned in the present application.

(2)

4. It is not in dispute that the proposed legal representatives of Indroba, but for Muktabai and Vajjnath i.e. applicant Nos.1 and 5, remaining were not served with notice on their person but it was through Muktabai only. The same cannot be considered as a proper service and as such, it is rightly claimed by the applicants that they were not properly represented before the Trial Judge.

5. In view thereof, subject to payment of costs of Rs.5,000/- to be deposited by the applicants to which respondent No.7 will be entitled. The impugned order dated 2nd December, 2015, passed by learned 4th Joint Civil Judge Junior Division, Parbhani, below Exh.94 in Regular Civil Suit No. 320 of 2005, is hereby quashed and set aside.

The parties hereto agree that they shall appear before the learned Trial Court on 10th July, 2017.

In view thereof, issuance of fresh notice on the application is dispensed with.

The learned Trial Judge is directed to conduct an enquiry in accordance with provisions of Order XXII, Rule 5 of the Code of Civil Procedure and submit said proceedings before this Court within a period of ten weeks thereafter.

(3)

With above observations, civil application stands allowed.

(N.W. SAMBRE, J.)

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