

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9365 OF 2017

1. Fulabai w/o Prabhu Gaikwad PETITIONERS
Since deceased through LRs.
i.e. petitioner No. 2 who is already on record

2. Dattu s/o Prabhu Gaikwad
Age - 58 years, Occ - Agriculture
R/o Aashta (J), Taluka - Omerga
District - Osmanabad

VERSUS

1. Vimalbai w/o Vyankatrao Ekunde RESPONDENTS
Age - 61 years, Occ - Household
R/o Saraswadi, Taluka - Nilanga
District - Latur

2. Hussain Maheboob Shaikh
Age - 45 years, Occ - Agriculture
R/o Aashta (J), Taluka - Omerga
District - Osmanabad

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Mr.Amol S.Sawant h/f Mr.M.S.Sonawane, Advocate for petitioners
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 26th JULY, 2017

ORAL JUDGMENT :

1. Heard learned advocate for the petitioners.
2. Petition has been moved against order passed on Exhibit-48 in Regular Civil Suit No. 199 of 2010 dated 29th April, 2017,

rejecting request of the petitioners to reject plaint pursuant to Order VII, Rule 11 (1) (d) of the Civil Procedure Code.

3. It is the case of petitioners that plaintiff had executed relinquishment deed after death of father of plaintiff and defendant No. 2, in favour of defendant No. 1. Further, with reference to decision of Hon'ble Single Judge of this court in the case of *"Shalini Sumant Raut and Others V/s Miling Sumant Raut and Others"* reported in 2013 (3) *Mh.L.J.* 364, it is contended that since father of plaintiff and defendant No. 2 died in 2008, pursuant to said decision, plaintiff would not have right to ancestral property, having married in 1974.

4. While rejecting application Exhibit-48, trial court has considered that defendants have admitted that provisions of amended section 6 of the Hindu Succession Act would be applicable and has also observed that legality of relinquishment deed would have to be determined. It appears that plaintiff has indeed referred to relinquishment deed having been brought about by fraud.

5. In the circumstances, it cannot be said that any case has been made out, which would fall under any of the categories referred to under Order VII, Rule 11 of the Civil Procedure Code.

6. Writ petition, as such, stands dismissed. It is however, made clear that observations hereinabove made are for the purpose of decision of writ petition and shall not have any further efficacy.

[SUNIL P. DESHMUKH, J.]

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