

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

WRIT PETITION NO. 6811 OF 2018

Sayyed Nisar Budhan .. Petitioner

versus

Sayeed Iliyas Abbas and others .. Respondents

Mr Vinod Y. Bhide, Advocate for petitioner

CORAM : SUNIL P. DESHMUKH, J.

DATE : 3rd July, 2018

ORDER :

1. Petitioner – original defendant no. 7 in regular civil suit bearing no. 55 of 2015 is before this court, aggrieved by order passed by 2nd Joint Civil Judge, Junior division, Sangamner on 15-03-2018 under which application Exhibit – 15 by defendant no. 7 for rejection of plaint pursuant to Order VII, rule 11 (a) (d) of the Code of Civil Procedure, 1908 has been disallowed.

2. Heard Mr. Vinod Bhide, learned advocate appearing on behalf of petitioner – original defendant no. 7 who contends that whole tenor of the plaintiffs' case would show that the plaintiffs are claiming right to property through Makbulbi - their grand mother. According to instructions of learned counsel Makbulbi pre-deceased father Hamid Mohammad and according to Muslim

personal law property of person dying intestate devolves only on the surviving heirs and not otherwise. In present case since Makbulbi pre-deceased father, plaintiffs would not be entitled to property of her father.

3. In addition, learned counsel submits that even going by genealogy as given in the plaint, it would be seen that the plaintiffs are not heirs of Makbulbi and are progeny of Aminabi who appears to be second wife of husband of Makbulbi, namely, Kamal.

4. Although this is so contended, averments in paragraph no. 6 of the plaint show that Makbulbi died before her husband Kamal. The contents of plaint as would be plainly seen, do show that the plaintiffs have claimed right to property of Makbulbi, *inter alia* she was survived by husband. It may be a case pursuant to Muslim Personal law that husband of Makbulbi would be able to have share in her property and, as such, it appears that the plaintiffs are staking claim.

5. Having regard to that while considering the application for rejection of plaint, what is germane to be taken into account is only the contents of the plaint and not beyond, arguments on behalf of the petitioner would not be amenable for consideration at this stage of the suit.

6. In the circumstances, it is not the case at all that the plaintiff is liable to be thrown out at threshold taking recourse to Order VII, rule 11 of the Code of Civil Procedure, 1908.

7. Request under writ petition is therefore not acceded to and is rejected.

8. The trial court may proceed with suit as expeditiously as possible. It is further made clear that the observations while passing this order have efficacy only to the extent of order impugned in writ petition and not beyond and those shall not influence decision making in the suit on its own merits.

9. Writ petition stands disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd/-