

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST.) NO.17941 OF 2018

Rajmani Benimadhav Malviya (decd) through
his heirs and LRs Dashrat R. Malviya and another ... Petitioners
Vs.
Ramdulari C. Mishra (decd) and others ... Respondents

Mr. D. D. Singh for Petitioners.
Mr. E. K. Sasidharan for Respondents No.2(bb), 2(bc), 2(bd), 2(ca),
2(cb), 2(d), 2(e) and 2(f).

CORAM : R. G. KETKAR, J.
DATE : AUGUST 2, 2018

P.C. :

Heard Mr. Singh, learned Counsel for the petitioners and
Mr. Sasidharan, learned Counsel for respondents No.2(bb), 2(bc), 2(bd),
2(ca), 2(cb), 2(d), 2(e) and 2(f) at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as defendants No.1 and 2, have challenge the order dated 18.04.2018 passed by the learned Judge, Court Room No.34 of the Court of Small Causes at Mumbai (Bandra Branch) below exhibit-71 in R.A.E.&R.Suit No.990/5881 of 1977. By that order, the learned trial Judge allowed the application for amending the plaint as per the schedule by adding respondents No.5 to 7 herein as defendants No.2(a) to 2(c). The plaintiffs were also directed to file on record amended copy of the plaint and to serve copy of the amended plaint on the defendants on or before the next on required processing fees.

3. In support of this petition, Mr. Singh submitted that respondents No.5 to 7 herein are not the legal heirs and representatives of the

original defendant - Rajmani Benimadhav, since deceased. Defendants No.1 and 2 are the only heirs and legal representatives. By the impugned order, the learned trial Judge has allowed the application made by the plaintiffs by directing to add respondents No.5 to 7 herein as defendants No.2(a) to 2(c), being the heirs and legal representatives of the original defendant - Rajmani Benimadhav, since deceased.

4. Mr. Sasidharan submitted that on 29.06.2018, amendment is carried out in pursuance of the impugned order and that writ of summons is served on the added defendants. Mr. Singh disputes this position.

5. Needless to observe that the learned trial Judge will satisfy about service on defendants No.2(a) to 2(c) and will also find out whether they are accepting that they are the heirs and legal representatives of the original defendant - Rajmani Benimadhav, since deceased. If they indicate that they are not the heirs and legal representatives of the original defendant - Rajmani Benimadhav, since deceased, the learned trial Judge will order their deletion from the proceedings. Petition is disposed of accordingly.

(R. G. KETKAR, J.)

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