

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 WRIT PETITION NO.1424 OF 2018

LILABAI BHAGWANSINGH PARDESHI AND OTHERS
VERSUS
ASHOKKUMAR DHARAMCHAND KASLIWAL AND OTHERS

.....
Advocate for Petitioners : Mr. S.H. Panchal h/f Mr. B.N. Palve
Advocate for Respondent No.1 : Mr. D.L. Agrawal
.....

CORAM : V. K. JADHAV, J.
DATED : 7th NOVEMBER, 2019

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. It appears that the petitioners came to be impleaded as party defendant Nos. 3 to 5 at the instance of the respondent-plaintiff. The respondent-plaintiff though filed the said application under Order VI Rule 17 of C.P.C. the said application is required to be assumed as filed under Order I Rule 10 of C.P.C.. Admittedly, the petitioners herein are not legal heirs of deceased defendant No.1 Sushila Pardeshi. The petitioners have contested the suit by filing their written statements and as per their defence deceased Sushila Pardeshi was having no concern with the original owner Kausabai and the said original owner Kausabai had executed will deed in her life time in the month of May, 1992 and after her death the petitioners came in possession of the suit property on the basis of said will deed. In view of the same, the petitioners have every right to cross examine

the plaintiff and his witnesses, if any. However, the court below has incorrectly observed in the impugned order that the present petitioners are legal heirs of deceased Sushila Pardeshi.

3. In view of above, the impugned order is not sustainable and the same is liable to be quashed and set aside. Hence the following order:-

O R D E R

- I. The writ petition is hereby allowed.
- II. The impugned order dated 04.11.2017 passed below Exh. 130 in Regular Civil Suit No. 155 of 1994 by the learned Civil Judge, Junior Division, Kannad is hereby quashed and set aside.
- III The application Exh.130 is hereby allowed.
- IV. The writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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