

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1036 WRIT PETITION NO.9529 OF 2015

ILIYAS KHAN MOHAMMADADKHAN PATHAN
VERSUS
MOHAMMAD KHAN ABBAS KHAN PATHAN DIED THROUGH LEGAL
REPRESENTATIVE AKHIL SIKANDAR

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Advocate for Petitioner : Mr. Patil Indrale Anand V.
Advocate for Respondent No.1 : Mr. S.B. Choudhary
Advocate for Respondent No.2 : Mr. D.B. Rode
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CORAM : V. K. JADHAV, J.
DATED : 17th JANUARY, 2020

PER COURT:-

1. By consent of both sides, heard finally at admission stage.
2. On perusal of impugned order dated 17.8.2015 passed by 2nd Joint Civil Judge, Junior Division, Kallam, below Exh.36 in R.C.S. No. 206 of 2012, it appears that the trial court has not determined the question as to the legal representatives in terms of provisions of Order XXII Rule 5 of C.P.C.. In para 5 of the impugned order, the trial Court has given reasoning as below:-

“5. Having regard to contents of this application in the light of nature of the present suit, I am of the view that present application deserves to be allowed subject to cost of Rs.300/- to defendants, although there is some delay. Holding so, I proceed to pass the following order.”

3. In view of above, I do not think that the impugned order is sustainable in the eyes of law. This court left with no other option but to direct the trial court to hear and decide the application Exh.36 afresh in terms of the provisions of Order XXII Rule 5 of C.P.C. Hence, I proceed to pass the following order:-

O R D E R

- I. The writ petition is hereby partly allowed.
- II. The impugned order dated 17.08.2015 passed below Exh. 36 in R.C.S. No. 206 of 2012 by the learned 2nd Joint Civil Judge, Junior Division, Kallam, is hereby quashed and set aside.
- III. The trial court is hereby directed to decide the application Exh.36 afresh after giving opportunity of hearing to both the parties in terms of provisions of Order XXII Rule 5 of C.P.C., as expeditiously as possible.
- IV. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)