

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

**CIVIL APPLICATION NO.2678 OF 2020
IN
SECOND APPEAL NO.414 OF 2011**

**PANDURANG BHIMRAO PADAR
VERSUS
SUSHILA PRABHAKAR LIPNE AND OTHERS**

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Mrs. S.A. Dhumal (Tambat), Advocate for the applicant
Mr. Milind Patil, Advocate for respondent Nos.1 to 3

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**CORAM : SMT. VIBHA KANKANWADI, J.
DATE : 05th APRIL, 2021.**

ORDER :

1 Present application is stated to have been filed under Order 22 Rule 5 of the Code of Civil Procedure, 1908, for determination of question as to legal representatives of deceased respondent No.4 Bapurao Bhaurao Padar and to direct the subordinate Court to try the said question and return the records together with evidence, if any.

2 Heard learned Advocate Mrs. S.A. Dhumal (Tambat) appearing for the applicant-appellant and learned Advocate Mr. Milind Patil for

respondent Nos.1 to 3.

3 It is pointed out by the learned Advocate for the applicant that when the Second Appeal came to be listed before this Court on 30.09.2013, the notice issued to respondent No.4 was returned unserved with remark that he is dead. Time limit was given for appellant to take necessary steps to bring the legal representatives, however, the efforts made by the appellant to get the information from the Grampanchayat, Chincholi about death of respondent No.4 were in vain. Death certificate was tried to be obtained but it was informed that there is no such record available. Much efforts were made by him, but due to non availability of death certificate and whereabouts of legal heirs of deceased respondent No.4 he could not move the necessary application within limitation. In the meantime, the respondent Nos.1 to 3 (original plaintiffs) had put the decree for execution and then in the month of January, 2020 the appellant contacted his Advocate and realized that the steps against unserved respondent No.4 have not been taken. The delay is not intentional and since he is unaware about the procedure he says that he has filed the present application.

4 It is to be noted that in the present application the appellant has not given the names of the legal representatives who are claiming to be the representative of deceased respondent No.4. Under such circumstance, there

is no question of determination of the said question as to who is the legal representative. This Court cannot undertake the act of investigation of the legal representatives of any party. It appears that the said provision has been misquoted and wrongly relied by the learned Advocate for the appellant. Rule 5 of Order 22 of the Code of Civil Procedure runs thus -

Order 22 Rule 5 CPC : Determination of question as to legal representative – Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court :

(Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.)

Interpretation of this provision would show that Rule 5 of CPC deals with the determination of the question as to legal representatives. That means, when a question arises, as to who would be the legal representative, who claimed to be such legal representative of a deceased party, then that question may be decided by the concerned Court and if it is the Appellate Court, then such determination can be got made through any subordinate Court. By no stretch of imagination this rule permits an appellant to ask an Appellate Court or even the Trial Court to undertake an investigation as to

who are the legal representatives without mentioning the names of such persons. It was for the appellant to investigate and file appropriate application. The law does not expect that the Appellate Court should enter into the shoes of the appellant to make inquiry or investigation about the names of the legal representatives. How the information will have to be taken has to be left to the concerned party. When the applicant-appellant himself is not aware about the whereabouts of the legal heirs of the deceased party, then the Court cannot help him in finding those persons. This Rule i.e. Rule 5 of Order 22 of CPC come into play only when two or more persons are disputing *interse* as to who would represent the estate of a deceased party to the litigation. Since the application itself is misconceived it deserves to be dismissed.

5 Interesting point to be noted is that original plaintiffs, who are the respondent Nos.1 to 3 here, are the daughters of one Bhimrao Bhaurao Padar. Bhimrao was having real brother- defendant No.2 Bapurao Bhaurao Padar. It is stated that the present appellant, original defendant No.3 Arjun and defendant No.4 Gangadhar are the real sons of defendant No.2 Bapurao. This is so appearing in the Judgment of the Trial Court as well as the First Appellate Court. The present appellant has not raised any objection in the appeal memo regarding this statement made in both the Judgments. That

means, it shows that he himself is the son of the present respondent No.4, till then he is coming with a case that the legal representatives of the deceased respondent No.4 be determined. How he could not have had knowledge about death of his own father is surprising fact. Definitely he is knowing who are the legal representatives of deceased respondent No.4 and yet when he is taking help of Order 22 Rule 5 of CPC then the result is obvious, such application will have to be rejected. Accordingly, it is rejected.

(Smt. Vibha Kankanwadi, J.)

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