



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 7094 OF 2023

1. Vishwanath Bhausahab Mote  
Age: 60 years, Occ: Agril,  
R/o. Pargaon Sudrik, Tq. Shrigonda,  
Dist. Ahmednagar.
2. Varsha Vishwanath Mote  
Age: 55 years, Occ: Household,  
R/o Pargaon Sudrik, Tq. Shrigonda,  
Dist. Ahmednagar.

.....PETITIONERS  
(Orig. Defendants)

**VERSUS**

1. Navnath @ Sachet Waman Chavan  
(Died through L.Rs.)
- 1A. Latabai Waman Chavan  
Age: 55 years, Occ: Agril,
- 1B. Pratibha Navnath Chavan  
Age: 29 years, Occ: Agril,
- 1C. Vishwatej Navnath Chavan  
Age: 7 years, Occ: Education,  
(Minor u/g of his real mother i.e.1B)

R.Nos.1A and 1B are resident of  
S.R.P. Group, Daund, Tq. Daund,  
Dist. Pune.

.....RESPONDENTS  
(Orig. Plaintiffs)

---

Ms. M. V. Narwade, Advocate for the Petitioners  
Mr. R. A. Tambe, Advocate for Respondent nos.1(a) and 1(b)

---

**CORAM : AJIT B. KADETHANKAR, J.**

**DATED : 31<sup>ST</sup> AUGUST, 2026**

**JUDGMENT :-**

. Rule. Rule made returnable forthwith.

**2. SUBJECT MATTER:**

**2.1.** Respondent no.1/Navnath s/o Waman Chavan instituted Regular Civil Suit No.111 of 2008 against the present petitioners seeking perpetual injunction restraining them from obstructing peaceful possession of the plaintiff over the suit property. The description of the suit property is described in Exhibit-1 of the suit.

**2.2.** During the proceeding of the suit, the defendants/present petitioners appeared and contested the suit by filing their written statement. During the course of proceedings, the plaintiff died, whereupon the present respondents moved an at Exhibit-66 seeking their impleadment as legal representatives of the deceased plaintiff. The said application came to be allowed by the impugned order dated 24.02.2023 passed by learned Joint Civil Judge Senior Division, Shrigonda in Regular Civil Suit No.111 of 2008.

**2.3.** Feeling aggrieved thereby, the petitioners are before this Court.

**2.4.** Ms. M. V. Narwade, learned Advocate for the petitioners would raise more than one issue for consideration in the Writ Petition. Firstly, she would argue that considering the nature of the prayer in the suit, the respondents/legal representatives of deceased plaintiff are incompetent to prosecute the cause of action further. Secondly, she submits that the suit itself is not maintainable for want of necessary prayers in the suit, and hence there was no occasion for allowing the legal representatives of the deceased plaintiff to participate in the suit proceedings.

**3. SUBMISSIONS:**

**3.1.** Ms. M. V. Narwade, learned Advocate for the petitioners invites my attention to the prayer clause in Exhibit-1 i.e. the plaint and would submit that the plaintiff had sought an injunction against the petitioners making out a cause of action that he was obstructed to cultivate the land. She would further submit that from the recitals of the prayer clause itself, it appears that cause died with the plaintiff and hence, the first issue of debate is sought to be justified.

3.2. So long as the second objection is concerned, Ms. Narwade will rely on the judgment rendered by the Hon'ble Supreme Court in the case of ***Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and others***, reported in ***(2008) 4 SCC 595***. She would also rely upon two judgments namely, ***S. Santhana Lakshmi Vs. D. Rajammal, 2025 INSC 1197*** and ***Sanjay Paliwal and Anr Vs. Bharat Heavy Electricals Ltd. Through Its Executive Director, 2026 INSC 61*** which reiterate the principles governing the nature and the scope of reliefs to be sought in a Civil Suit.

3.3. She would further submit that considering the necessity to draft the suit for necessary and adequate prayers, the suit itself is not maintainable which is meant only for perpetual injunction. To elaborate the second issue on which Ms. Narwade has much thrust, she would submit that considering the dispute raised by the defendants/present petitioners, the title of the plaintiff was seriously doubted. She would submit that the defence not only put dark clouds on the title of the plaintiffs but also falsify plaintiffs' case that they are in the possession of the suit property. Therefore, she

submits that unless there were prayers seeking declaration as to the title and also a prayer for possession, the suit is not at all maintainable in view of the law cited supra. With this, Ms. Narwade concludes her arguments and prays to allow the petition.

**3.4.** In answer, Mr. R. A. Tambe, learned Advocate for the respondents/legal representatives of the deceased plaintiff would also rely on the recitals of the plaint. He would submit that the first point of objection raised by Ms. Narwade cannot be a fatal to the participation of the legal representatives of the plaintiff in the suit. He would submit that their father has claimed ownership in the subject matter/suit property by virtue of registered sale deed. He would submit that the contents of the plaint if taken as it is, it would show that their deceased father has given reference to his ownership and then has shown his grievance against the interference caused by the present petitioners.

**3.5.** He would submit that in view of Section 2 of the Civil Procedure Code, as also Order XXII, Rule 1 thereof, the cause of action devolves upon the legal representatives of the deceased plaintiff, and therefore they were justified in filing

application below Exhibit-66. He further submits that the Trial Court was also justified in allowing the legal representatives to participate in the suit proceedings.

**3.6.** So long as the another objection raised by Ms. Narwade is concerned, Mr. Tambe submits that the plaintiff, and now the legal representatives of the deceased plaintiff would have to bear the consequences if they fail to make out a case before the Court in support of the relief sought in the plaint. As such, he would submit that the plaint does not suffer from any infirmity nor it is acceptable that the suit could be dismissed or was not maintainable for the reasons which are narrated by the petitioners in this case. He would further submit that the issue of maintainability of the suit is not the subject matter before this Court and same may not be permitted to be agitated by the petitioners in the present petition.

#### **4. CONCLUSION**

**4.1.** Heard both the learned Advocates at length. Perused the papers of the Writ Petition. Section 2(11) of the Civil Procedure Code and Order XXII, Rule 1 reads thus:

*2(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;*

*ORDER XXII*

*Death, Marriage and Insolvency or Parties*

*1. No abatement by party's death if right to sue survives.—The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.*

**4.2.** Having regard to the averments in the plaint, it appears that the plaintiff has traced his title referring to a registered sale deed executed in his favour. Thus at the threshold, the presumption is in favour of the plaintiff. The cause of action pleaded for instituting the suit is the obstruction caused by the defendants in cultivating the suit property. It is an undisputed fact that the present respondents are legal representatives of the deceased plaintiff.

**4.3.** Considering the averments in the written statements, it cannot be accepted that the cause of action for the suit came to an end with the demise of the plaintiff as argued by Ms. Narwade. Objection to defendants was their interference with

the suit property. The prayer in the suit can not be segregated from the suit land. I do not comprehend with Ms. Narwade's submission that the cause of action died with the deceased plaintiff. Hence, in view of the provisions referred to hereinabove, I am convinced with the findings recorded by the Trial Court to the effect that the legal representatives of deceased plaintiff can further prosecute the present suit proceedings. Thus, the first debate issue stands answered.

**4.4.** So long as the another objection on maintainability of the suit is concerned, I am convinced with the arguments advanced by Mr. Tambe that the said is not the subject matter before this Court. The only order under challenge before this Court is the order passed by the Trial Court allowing the legal representatives of the deceased plaintiff to further prosecute the suit. Considering the nature of objection and the defence or response that the legal representatives of the deceased plaintiff may advance at an appropriate stage of the suit before the Trial Court, it would not be appropriate to comment on this objection in the present petition.

**4.5.** In view of this, I find no infirmity in the view taken by the learned Judge of the Trial Court. The order impugned in this Writ Petition is absolutely justified. Hence, Writ Petition stands dismissed.

**5.** Rule stands discharged.

**( AJIT B. KADETHANKAR, J. )**

*Rushikesh/2026*