

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8900 OF 2015

Shri. Sunil Ghisulal Barde

.. Petitioner

Versus

Bapu Jinnappa Koli

(Since deceased through his legal heirs)

Smt. Shantabai Bapu Koli and others

.. Respondents

Mr. R. S. Kulkarni, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 10th SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 09.07.2015 passed by the Learned Civil Judge Senior Division, Jaysingpur, by which order the application Exh.185 filed by the Petitioner/original Plaintiff for discarding the Written Statement filed by the heirs of the Defendant No.2 came to be rejected. The suit in question being Special Civil Suit No.9 of 2006 has been filed by the Petitioner/Plaintiff for specific performance of the agreement in respect of the sale of 15 plots entered into between the Plaintiff and the Defendant Nos.1 and 2. A common Written Statement has been filed on behalf of the Defendant Nos.1 to 6. The Defendant No.2 expired, as a consequence of which the

Respondent Nos.2(a) to 2(c) herein were brought on record. The said Respondents filed their Written Statement Exh.134 on 21.10.2013 which is on record and thereafter in the suit the affidavit of examination-in-chief came to be filed on behalf of the said heirs and after the matter was placed for cross-examination by the Plaintiff that the instant application Exh.185 came to be filed for discarding the said Written Statement filed on behalf of the said Defendant Nos.2(a) to 2(c). The application was founded on the fact that in the Written Statement filed by the said Defendants inconsistent pleas to the ones taken by the Defendant No.2 have been taken and having regard to the mandate of Order 22 Rule 4(ii), same is not permissible as according to the Plaintiff i.e. the Petitioner herein the only such defences which are appropriate to their character as the legal representatives of the deceased Defendant can be taken. In support of the said contention, reliance is placed on the judgments which have referred to in the impugned order. The Trial Court crystallized the proposition in a manner to say that the representatives are entitled to have their own independent plea. The Trial Court thereafter however has clarified that the contentions which are personal to the deceased cannot be wiped out by the legal heirs by taking inconsistent pleas. However, the contentions which are in respect of the personal right of the legal heirs of the deceased cannot be said to be inconsistent with the contentions raised

by the deceased. The Trial Court has therefore not foreclosed the Plaintiff by making the said observation and it is for the Trial Court therefore to decide as to which plea of the heirs is to be accepted by it. In the light of the said observation which is by way of clarification in the last paragraph of the impugned order, in my view, the interdiction of this Court is not necessitated. The Writ Petition is accordingly dismissed.

2. However, it is clarified that the right of the Plaintiff to object to such part of the evidence which is inconsistent with the pleas of the original Defendant is reserved for being agitated at the appropriate time at the hearing of the suit.

[R.M. SAVANT, J]

Certified to be true and correct copy of the original signed order.