

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1529 OF 2014

Jagannath s/o Govinda Marathe ...Petitioner

versus

Shri Visalad Wani Panch Trust, Taloda ...Respondent

.....
Mr. H.S. Surve, advocate for the petitioner
Mr. S.P. Shah, advocate for respondent
.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Order : 08.02.2016**

**Date of pronouncing
the Order: 17.02.2016**

PER COURT :-

1. Heard finally by consent of the parties.
2. The respondent-plaintiff is a Trust of Wani Samaj. They had purchased the suit property. However, on noticing that the predecessor in title is tenant of the suit property, the respondent-plaintiff instituted a suit bearing R.C.S. No. 32 of 1980 for recovery of possession against the father of petitioner. However, he died during pendency of suit and his legal heir is brought on record. After the legal heir is brought on record, the petitioner-legal heir applied by way of application at Exh.194 to the court to allow him to file

additional written statement challenging therein that the suit itself is not maintainable. The trial court by impugned order dated 16.1.2014 rejected the application Exh.194. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the tenant-original defendant tendered his written statement before the trial court and denied the contents of the suit. He had claimed that he cannot be evicted. The trial court, on the basis of pleadings of the parties, framed issues in the matter. Even the parties led their evidence. However the matter was stagnated in relation to some interlocutory orders and due to challenge to the said interlocutory orders in the superior Courts. In the meantime, the tenant-original defendant expired. Thus, the petitioner-legal heir is brought on record. On appearance of petitioner, he filed an application Exh.194 before the Court seeking permission to file additional written statement in the suit. The trial court, by order dated 22.7.2013, rejected the said application. Being aggrieved by the same, the petitioner had challenged the said order by filing writ petition No. 6405 of 2013. This Court by order dated 16.12.2013 has restored the application at Exh.194 to its original file and further directed the trial court to hear and decide the said application afresh in accordance with law.

Learned counsel submits that after the matter was remanded back by this court, the trial court, while deciding application Exh.194, directed that part of the written statement can not be permitted to be brought on record. The trial court has observed that the petitioner has taken altogether different plea and therefore, such part of written statement is impermissible. Learned counsel submits that the written statement filed by the petitioner could not be accepted in piecemeal by the adjudicating Court. Learned counsel further submits that restriction could not be imposed upon the petitioner-defendant so as to prohibit him from submitting his pleadings by way of written statement. This would amount to denial of opportunity to raise all available grounds by way of pleadings in the suit. Learned counsel submits that therefore, the impugned order dated 16.1.2014 calls for interference and the same is liable to be quashed and set aside.

4. Learned counsel for the respondent-plaintiff submits that when the suit was fixed for final hearing, the present petitioner, who is legal heir of original defendant, filed an application Exh.194 for placing on record his additional written statement. Learned counsel submits that original defendant viz. Govinda had filed his written statement on 2.2.1981 and vide para 5 and 6 of the written statement, original defendant admitted that he was cultivating the suit land as tenant. Based on the said pleadings of both the parties, issues were settled

on 2.5.1981 and accordingly trial of the suit was commenced. Both the parties adduced and closed their evidence. Learned counsel further points out that the original defendant thereafter filed an application Exh.69 dated 28.4.1983 seeking leave to amend the written statement. Original defendant has contended by way of proposed amendment that he recently learnt about mutation entry No.816 and therefore, on the basis of the said mutation entry, he is seeking amendment in the written statement to contend that he himself become owner of the suit property. However, the said application was not persuaded by the original defendant. Learned counsel further points out that the original defendant filed application Exh.84 on 14.2.1992 again for seeking leave to amend of written statement on the basis of sanctioning of said mutation entry 816. The trial court was pleased to reject the application Exh.84 primarily on the ground that the amendment sought is contrary to the original written statement and the parties have already closed their evidence long ago. It is also observed that the original defendant has deliberately made false statement about mutation entry No. 816. Learned counsel submits that when legal heir of any party to the litigation is brought on record, he steps into the shoes of the original party and he carries on the proceedings as it is from the stage at which he is brought on record. Learned counsel submits that the legal heirs so brought on record cannot take a defence, which was

not available to the original defendant or raise plea which is contrary to the pleadings of the original defendant. Learned counsel submits that the original defendant had unsuccessfully tried to raise a plea that he has become the owner of the suit land vide application at Exh.69 as well as Exh.84. As such, legal heir of original defendant cannot be permitted to raise same plea by way of additional written statement. Learned counsel submits that the order passed by the trial court suffers from no error. Thus, the impugned order calls for no interference and the writ petition is liable to be dismissed.

Learned counsel for the respondent-original plaintiff, in order to substantiate his submissions, places reliance on the following judgments:-

- I) J.C. Chatterjee and others vs Sri Kishan Tandon and another, (AIR 1972 SC 2526).
- II) Vidyawati vs. Man Mohan and others, (1995) 5 SCC 431,
- III) Manguesh Rajaram Wagle and another vs. Suresh D. Naik and others, 2008 (3) Mh.L.J. 297,
- IV) Babulal N. Shukla vs. Jeshakar N. Shukla, AIR 1972 Calcutta 494.
- V) Sumtibai vs. paras Finance Co Mankanwar Parasmal Chordia, 2007 Law Suit (SC) 1080.

5. It is well settled that the legal representatives who are substituted in place of deceased defendant cannot take a plea contrary to the one taken by the deceased defendant. Thus, when the plea sought to be raised by the deceased defendant by way of amendment in the written statement was rejected by the court, the legal representatives brought on record are bound by it and cannot be allowed to re-agitate the same. The substituted defendants merely step in the shoes of the original defendant and their presence before the Court may be necessary in order to enable that court to effectively and completely adjudicate upon the questions involved in the suit. Though the legal representatives are entitled to have a defence available to the original defendants, they can take a plea appropriate to their character only, and not contrary to the plea already taken by the deceased. Here in this case, the original defendant's application at Exh.84 seeking leave to amend the written statement on the basis of the mutation entry No. 816 came to be rejected by the trial court. The original defendant, by way of said application Exh.84, sought to amend the written statement to contend that he has become owner of the suit property on account of sanctioning of mutation entry No. 816. Learned Judge of the trial court went through the original written statement Exh.11 and the proposed written statement. The learned Judge of the trial court, after

reading both the written statements jointly, observed that the petitioner has taken altogether different plea in para 1-B in line Nos. 4 to 7 and para 1-C of the proposed written statement. Learned Judge of the trial court has further observed that if the written statement submitted by the petitioner is accepted as it is, then inconsistent plea will come on record. The trial court has accordingly allowed prayer clause "A" of the application and partly allowed the prayer clause "B". The trial court has accepted the written statement excluding statement to the para 1 (B), line number four to seven and statement to the para 1(C) to the written statement. In my considered opinion, the trial court has rightly passed order in tune with the provisions of order XXII Rule 4 (2) of the Code of Civil Procedure.

6. In the light of above discussion, the impugned order thus calls for no interference. Writ petition is devoid of any merits and the same is accordingly, dismissed. In the circumstances there shall be no order as to costs.

(V. K. JADHAV, J.)

rlj/