

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4797/2014

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. A. R. Gole for the petitioner

Mr. G. M. Savagave for the respondent

CORAM : K. K. TATED, J.

DATE : JULY 12, 2016

P.C.:

1. Heard. By this petition under Article 227 of the Constitution of India, the petitioner legal heirs of the plaintiff challenges order dated 14.02.2014 passed by the Civil Judge, Senior Division, Jaisingpur below exhibit 88 in Regular Civil Suit No. 103/2010 rejecting their application under Order XXII Rule 3 of the Code of Civil Procedure, 1908 for bringing his name on record as legal heirs.

2. The learned counsel for the petitioner submits that the original plaintiff filed Regular Civil Suit No. 103/2010 in the court of Civil Judge, Senior Division, Jaisingpur for an order of injunction restraining the respondent defendant from changing the nature of the suit property and

construction thereon. He submits that during pendency of the suit, after filing the affidavit of evidence, the original plaintiff expired on 04.06.2013. Hence, the petitioner being legal heir, made application under Order XXII Rule 3 of the Code of Civil Procedure, 1908 on 29.06.2013 i.e. within 25 days from the date of death of original plaintiff. He submits that the trial court erred in coming to the conclusion that in view of death of original plaintiff, nothing survives in the suit which was only for injunction. He submits that the trial court failed to consider the fact that being legal heirs of plaintiff they have right, title and interest in the suit property and they can proceed with the matter on its own merits. Hence, the impugned order is liable to be set aside allowing the petitioner's application dated 29.06.2013 exhibit 88 under Order XXII Rule 3 of the Code of Civil Procedure, 1908. He submits that if the impugned order is not set aside, irreparable loss will be caused to the petitioner.

3. On the other hand, the learned counsel for the respondent No.1 opposed the Writ Petition. He submits that the plaintiff filed the suit simplicitor for injunction from disturbing plaintiff's possession by the defendant co-owner and from changing the

nature of the property. He submits that on death of original plaintiff, nothing survives in the suit. These facts were considered by the trial court and rightly rejected the application made by the legal heirs of the plaintiff by the trial court below exhibit 88. Hence, there is no substance in the Writ Petition. Same be dismissed with costs.

4. Heard the learned counsel for the parties. Bare reading of the application filed by the plaintiff shows that the same was for injunction restraining the defendant from changing the nature of the suit property in which he was a joint owner. The legal representatives of the deceased plaintiff have right to proceed with the matter because being legal heirs, they get right in the suit property. These facts were not considered by the trial court properly. Hence, I am of the opinion that the impugned order dated 14.02.2014 passed by the Civil Judge, Senior Division, below exhibit 88 in Regular Civil Suit No. 103/2010 is required to be set aside and the application made by the petitioner below exhibit 88 required to be allowed.

5. Hence, following order is passed:

a. Writ Petition is allowed.

b. The impugned order dated 14.02.2014 passed by the Civil Judge, Senior Division, Jaisingpur below exhibit 88 in Regular Civil Suit No. 103/2010 is set aside.

c. The application dated 29.06.2013 made by the petitioner below exhibit 88 under Order XXII Rule 3 of the Code of Civil Procedure, 1908 is allowed.

d. The petitioner is permitted to carry out appropriate amendment with permission of the trial court in Regular Civil Suit No. 103/2010 within 8 weeks from today.

e. The petitioner is directed to serve an amended copy of the plaint on the respondents thereafter immediately.

f. No order as to costs.

g. Parties to act on an authenticated copy of this order.

JUDGE