

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

WRIT PETITION NO.2327 OF 2013

Mrs. Pooja Sunil Kondekar & Anr.	...Petitioners
vs.	
Suresh Vadilal Chokshi & Anr.	...Respondents

Mr. Rajesh S. Datar for the Petitioner.
Mr. B. G.Tangsali for Respondent No.1.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 10th October, 2017

P.C.:

. Heard learned counsel for the Petitioners. Rule. Mr. Tangsali, learned counsel waives service. Rule made returnable forthwith with the consent of the parties.

2. The Petitioners are aggrieved by the order dated 21/12/2017 passed by the Civil Judge, J.D. Karjat, District Raigad in Regular Civil Suit No.4/2009, allowing the legal heir of Suresh Vadilal Chokshi to appear as a legal heir of the deceased Plaintiff. It appears from the record that Suresh Vadilal Chokshi is the original Plaintiff in that suit.

3. It appears from the record that the suit is of the year 2009. During pendency of the suit said Suresh Vadilal Chokshi expired on 25/7/20012. Hence, the legal heir of Suresh Vadilal Chokshi i.e. Gaurav Chokshi filed an application on 23/10/2012 thereby seeking permission to prosecute the suit as legal heir of Suresh Vadilal Chokshi. It also appears that Gaurav Chokshi has filed supporting affidavit along with his application. It was specifically contended that Will was executed in his favour. The learned Civil Judge had allowed the application and

had permitted the legal heir of Suresh Chokshi to prosecute the case.

4. According to the learned counsel for the Petitioners, the application filed by Gaurav Chokshi was not maintainable, since according to Defendant Nos.1 to 5 the said application was not signed by Gaurav Chokshi but, was signed by his advocate and that a copy of probate was not produced on record. Learned counsel vehemently submits that application filed by Gaurav Chokshi was not supported by an affidavit.

5. The learned Judge has observed that the supporting affidavit was filed at Exhibit 81. Application was filed within limitation. It is rightly observed that in fact a technical approach cannot be taken in such cases. In the interest of justice, the learned Judge has rightly allowed the application. No case for interference is made out. Hence, the Petition being sans merit stands dismissed with no order as to costs.

6. However, it is made clear that the above findings are restricted to the application filed below Exhibit 78 and this Court has not gone into the merits of the matter.

7. Office to communicate this order to the concerned Court forthwith.

(SMT. SADHANA S. JADHAV, J.)