

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6031 OF 2019

Shaikh Sajid Shaikh Gafar

...Petitioner

Versus

Shaikh Salim Shaikh Latif & Ors.

...Respondents

.....
Mr. Arvind Deshmukh, Advocate for the Petitioner.

.....
CORAM : **RAVINDRA V. GHUGE, J.**

DATE : **12-07-2019.**

PER COURT :

01. The petitioner-original plaintiff in R.C.S. No. 147/2013 is aggrieved by the Order dated 5.2.2019 passed by the Trial Court, vide which application Exh. 88 filed by the petitioner, has been rejected.

02. The learned Advocate for the petitioner strenuously submits that the impugned Order is perverse and erroneous. The original deceased defendant No. 2 Ramesh Lal had filed his written statement through his power of attorney holder, who are defendant Nos. 2 and 3, at Exh. 56. After the demise of Ramesh Lal, his legal representatives were brought on record and they also filed their written statement at Exh. 85. Grievance of the petitioner is that the said written statement is based on

such a broad compass that it amounts to trying to apply a gloss over the averments set out by Ramesh Lal in his written statement.

03. The learned Advocate submits that the law clearly allows a legal heir to file his own written statement, though the deceased may have filed such a written statement. However, legal heirs can not enter into an area which would be personal to the deceased.

04. He relies upon the Judgment of the Honourable Apex Court in the matter of **Vidyawati V/s Man Mohan and others, (AIR 1995 Supreme Court 1653)**. He draws my attention to the grounds formulated in the petition. The Honourable Apex Court had considered an issue as to whether the legal representatives of the deceased could file a written statement notwithstanding that the deceased had filed such a written statement, in the matter of **Bal Kishan V/s Om Prakash, (AIR 1986 Supreme Court, 1952)** wherein it was concluded that legal heirs can file an independent written statement as all rights under Order 22 Rule 4(2) and defences available to the deceased defendant would become available to the legal representatives. In addition, if such legal representatives have any independent right, titles or interest in the property, he

can get himself impleaded in the suit as a party defendant.

05. The same view was expressed in **Jagdish Chandar Chatterji V/s Srikishan, (AIR 1972 Supreme Court 2526)**. In the said Judgment as well, it has been held that the legal representatives can urge all such contentions, which the deceased would have urged, except those, which were personal to the deceased. In **Vidyawati** (Supra) the Apex Court has taken a similar view.

06. Considering the above, I do not find that the impugned Order could be termed as perverse or erroneous.

07. As such, this petition is disposed off. Nevertheless, it be noted that the petitioner would be at liberty to point out the averments which pertain to the personal issues of the deceased defendant. The Trial Court would then consider the law laid down by Honourable Apex Court in the above referred cases.

[RAVINDRA V. GHUGE]

JUDGE

Dahibhate/-