

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

943 WRIT PETITION NO.3915 OF 2021

SHAIKH SAJID SHAIKH GAFAR
VERSUS
SHAIKH SALIM SHAIKH LATIF AND OTHERS

...
Advocate for the Petitioner : Shri Arvind Deshmukh
...

CORAM : N. J. JAMADAR, J.

DATE : 02nd MARCH, 2021

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ORAL ORDER :

Heard the learned Advocate for the petitioner. The petitioner plaintiff has again invoked the writ jurisdiction of this Court being aggrieved by the order dated 30th December 2019 passed by the learned Joint Civil Judge Junior Division, Jintoor, whereby the learned Judge declined to consider the objection raised by the petitioner to defences sought to be taken by the defendant Nos.2(A) to 2(D), the respondents No.2/1 to 2/4 in this petition, in their written statement post impleadment as the legal representatives of the deceased defendant No.2.

2. The petitioner instituted suit for injunction. The defendant No. 2 filed written statement (Exhibit 56). After the demise of defendant No.2, the respondents No.2/1 to 2/4 came to be impleaded as defendants No. 2(A) to 2(D). The respondents filed written

statement (Exhibit 85). The petitioners preferred an application (Exhibit 88) to reject the written statement of the Respondents No.2/1 to 2/4. It was dismissed by the Ld. Civil Judge by order dated 05th February 2019. The petitioner assailed the said order in Writ Petition No. 6031/2019. This Court declined to entertain the Writ Petition.

3. The learned Advocate for the petitioner pointed out the order passed by this Court on 12th July 2019 in Writ Petition No. 6031/2019, especially the observations in paragraph No. 7; which reads as under :-

"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."

4. It does not appear that the learned Judge has properly appreciated the nature and purport of the aforesaid observations. Indubitably, this Court did not find the order dated 05th February 2019 perverse or erroneous. However, this Court categorically observed that the petitioner plaintiff would be at liberty to point out

the averments which pertain to the personal issues of the deceased defendant and the Trial Court should consider those objections in the light of the law laid down by the Supreme Court in the cases, which were referred to in the order dated 12th July 2019.

5. The order dated 30th December 2019 singularly lacks the requisite consideration and reasons. Hence, it is necessary to direct the learned Joint Civil Judge Junior Division, Jintoor to decide the objection of the plaintiff afresh. Thus, the following order :-

ORDER

1. The learned Joint Civil Judge Junior Division, Jintoor shall decide the objection of the plaintiff to the averments in the written statement filed on behalf of the legal representatives of deceased defendant in light of the order dated 12th July 2019 especially the observations in paragraph No.7, extracted above.

2. The petition accordingly stands disposed of.

(N. J. JAMADAR, J.)

shp/-