

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

WRIT PETITION NO. 11162 OF 2021

Shaikh Mohad. s/o Sk. Abdul Mujawar
(Through L.Rs.)

- 1A) Jaherabee w/o Mohammad Mujawar,
Age 70 years, Occ. Household,
R/o. A-p Chausala Tq. Dist. Beed.
- 1B) Rafique s/o Mohmmad Mujawar,
Age 50 years, Occ Agriculture,
R/o. As above.
- 1C) Khalil s/o Mohmaad Mujawar,
Age 47 years, Occ. Agriculture,
R/o. As above.
- 1D) Sikandar s/o Mohmaad Mujawar,
Age 43 years, occ. Agriculture,
R/o. As above.
- 1E) Sadek s/o Mohmaad Mujawar,
Age 43 years, Occ. Agriculture,
R/o. As above.

... **Petitioners.**
(Orig. Defendants)

VERSUS.

Shaikh Anis s/o Shaikh Abdul Mujawar,
Age 72 years, Occ. Agri. & Business,
R/o. Chousala, Tq. & Dist. Beed

... **Respondent.**
(Orig. Plaintiff.)

...
Advocate for the Petitioners : Mr. Dharurkar Chaitanya V.
Advocate for the Respondent : Mr. A. N. Sikchi.

CORAM : MANGESH S. PATIL, J.
DATE : 24.11.2021.

ORAL JUDGMENT :

Heard learned advocate Mr. Dharurkar for the petitioners and learned

advocate Mr. Sikchi for the sole respondent. Rule. The Rule is made returnable forthwith. With the consent of the parties the matter is heard finally at the stage of admission.

2. The respondent has filed a suit for partition and separate possession of his share in the suit property. According to him it was received jointly by all the three brothers i.e. respondent, the original defendant no. 1 and the original defendant No. 2 in exchange of a land with the Wakf Board. The defendant No. 1 having died the petitioners were brought on record as his legal representatives. By moving application (Exh. 277) they sought leave to file a written statement and by application (Exh. 284) they also sought leave to allow them to such take pleas as are available to them under Order XXII Rule 4(2) of the Code of Civil Procedure. By the impugned common order both these applications have been rejected.

3. Having heard both the sides and perusing the impugned orders as also the record it is quite apparent that the suit has been filed by the respondent *inter alia* claiming to be the co-owner of the suit property, along with the original defendant No. 1 and the original defendant No. 2. It is his specific stand that these three brothers had received that land in exchange with the Wakf Board. It stands admitted that the defendant No.1 had failed to file any written statement and his subsequent application to allow him to file the written statement was also rejected and that order had become final.

4. It is also a matter of record that in spite of there being no written statement of his, the defendant No. 1 i.e. the predecessor of the petitioners tendered his affidavit in lieu of examination-in-chief (Exh. 209) and during his cross-examination on behalf of the legal representatives of the original defendant No. 2 he specifically admitted that the land Sy. No. 4 i.e. suit property was received in exchange for the land Sy. No. 33 of the Wakf Board. He further admitted that it was jointly owned by him and his two brothers i.e. respondent and the defendant No. 2. Not only this but even he

expressed his willingness to effect the partition.

5. True it is that by virtue of the order XXII Rule 4(2) of the Code of Civil Procedure, a legal representative is entitled to file a separate written statement taking appropriate stand commensurate with the rights and interest he has. But it is equally trite that no inconsistent stand can be permitted to be taken by the legal representatives than the one taken by their predecessor. This is what precisely seems to be happening in the matter in hand. The proposed written statement sought to be filed by the petitioners clearly shows that they are seeking to take up a completely inconsistent stand having the effect of obliterating the clinching admissions given by their predecessor referred to herein above. Such is not the purport of the provision. Bearing in mind such limitation for a legal representative to file written statement, the impugned order seeks to reject the application being not maintainable.

6. The learned advocate Mr. Dharurkar has cited following decisions to buttress his submission that a legal representative can independently file his additional written statement :

- (i) **Vidyawati vs Man Mohan & Others;**
A.I.R.1995 Supreme Court 1653.
- (ii) **Jagdish Chander Chatterjee & Ors vs Sri Kishan & Anr;** **A.I.R. 1972 Supreme Court 2526.**
- (iii) **Bal Kishan vs Om Prakash & Anr;**
A.I.R. 1986 Supreme Court 1952.

There cannot be any quarrel about the principle. However, neither of these decisions demonstrate that the legal representatives can take a stand which would be inconsistent with the stand of their predecessor. The petitioners are therefore not entitled to take any benefit from these decisions. There is

no error or illegality in the order under challenge.

7. The Writ Petition is dismissed.

8. The Rule is discharged.

(MANGESH S. PATIL, J.)

mkd/-