

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

WRIT PETITION NO.7489 OF 2022

**SHAIKH SAJID SHAIKH GAFAR
VERSUS
SHAIKH SALIM SHAIKH LATIF AND ANOTHER**

...
Advocate for Petitioner : Mr. Arvind S. Deshmukh

...

CORAM : MANGESH S. PATIL, J.

DATED : 19 JULY 2022

PER COURT :

Heard the learned advocate Mr. A. S. Deshmukh for the petitioner.

2. The petitioner is the original plaintiff, who has filed a suit for perpetual injunction simplicitor restraining the respondents from obstructing his possession in the suit property.

3. Original defendant no.2 - Rameshlal had filed a written statement, *inter alia*, disputing petitioner's title and possession. After his demise, the respondent nos. 2/1 to 2/4 filed their written statement after they were brought on record as legal representatives.

4. The petitioner submitted an application (Exhibit-88) taking objection to some portion of the pleadings incorporated in the written statement of these legal representatives stating that those have been

incorporated with an ulterior motive to cause prejudice to him and that the averment which were personal to the deceased Rameshlal have also been touched.

5. It appears that the application was decided earlier also and the petitioner had approached this court in Writ Petition No.6031 of 2019. By referring to the decisions in the matters of *Vidyawati Vs. Man Mohan and others, AIR 1995 SC 1653; Bal Kishan Vs. Om Prakash, AIR 1986 SC 1952; and Jagdish Chandar Chatterji Vs. Srikishan, AIR 1972 SC 2526*, the writ petition was disposed of with following observations in paragraph no.7 of order dated 12-07-2019 :

“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.”

Pursuant to such observations, the trial court once again has decided the application (Exhibit-88) by the order under challenge.

6. The learned advocate Mr. Deshmukh would strenuously submit that the proposed amendment whereby the LR.s. of the original defendant no.2 are now seeking to raise the issues which the deceased could have but had not raised and they are not entitled to take any such stand as has been laid down in the aforementioned cases. He would pertinently point out that in the written statements of these LR.s., issue regarding the effect of the decisions in

the earlier round of litigation have been spelt out. The deceased could have taken such a plea, but he having not done so, allowing the legal representatives to take such a plea would be beyond the purview of law, in view of the provisions of Order XXII Rule 4(2) of the Code of Civil Procedure. The trial court has not considered the law, though it has referred to the decisions in the matters of *Jagdish Chandar Chatterji* and *Vidyawati (Supra)* and has erred in rejecting the application (Exhibit-88).

7. I have carefully perused the judgments cited at the bar (supra), the order passed by the trial court and the pleadings.

8. As can be appreciated, the petitioner has been claiming to be the owner in exclusive possession of the suit property and has prayed for perpetual injunctions etc.

9. The original defendant no.2 Rameshlal in his written statement had *inter alia* disputed not only title but even possession. By the proposed amendment his legal representatives have not changed the stance. They continue to dispute the title and possession. In addition, what they have averred is that the decisions in the earlier round of litigation in R.C.S. No. 103 of 1962 which was a litigation between the deceased defendant no.2 Rameshlal and the predecessor-in-title of the petitioner has no nexus to the title being set up by the latter (petitioner). True it is that even the deceased defendant no.2 Rameshlal could have taken such a stand, however, it cannot

be said that this stand is personal to him or is inconsistent with the written statement filed by him. Rather, this is one of the parameters to be borne in mind as laid down in the matter of ***Bal Kishan*** (supra) wherein it has been observed as under :-

“The sub-rule (2) of Rule 4 of Order 22 authorises the legal representative of a deceased defendant to file an additional written statement or statement of objections raising all pleas which the deceased defendant had or could have raised except those which were personal to the deceased-defendant or respondent.”

10. If such is the position in law, when the written statement filed by the legal representatives of the deceased defendant no.2 Rameshlal does not intend to withdraw any admission or is not inconsistent with the stand that was taken by him and does not touch to anything personal to him, it cannot be said that the written statement filed by the respondent nos.2/1 to 2/4 is not admissible and is violative of the limitations prescribed by Order XXII Rule 4 of the Code of Civil Procedure.

11. The trial court has apparently borne in mind the principles which govern the law and has correctly evaluated the fact situation in the matter. The impugned order is neither perverse nor arbitrary.

12. Writ petition is dismissed.

(MANGESH S. PATIL, J.)