

SA Pathan

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

WRIT PETITION NO.4892 OF 2018

SHABNOOR
AYUB
PATHAN
Digitally signed by
SHABNOOR AYUB
PATHAN
Date: 2023.09.08
12:14:37 +0530

Dashrath Ananda Salunkhe (Since
Deceased)

Through Legal Heirs

... Petitioners

V/s.

Kusum Chandrakant Danekar & Ors

... Respondents

Mr. Kuldeep U Nikam, for the Petitioner.

Mr. Drupad Sopan Patil a/w Mr. Rugwed Kindar, for
Respondent Nos.1, 2, 4 & 5.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 7, 2023

P.C.:

1. Challenged this writ petition under Article 227 of the Constitution of India, the Trial Court has been rejected application of legal representatives of defendant No.1 to cross-examine plaintiffs witnesses and to lead evidence.

2. On perusal of the record, it appears that the plaintiffs have been filed a suit for declaration that, plaintiff No.2 to be declared as owner of the property mentioned in clause 1 of the plaint; alternatively sale deed executed in favor of defendant No.1 be declared as null and void and for removal of encroached premises by defendant No.1. The said suit was challenged contested by defendant No.1 by filing written statement.

3. During pendency of the suit, defendant No.1 died. Defendants No.1-a to 1-c were brought on record as legal representatives of defendant No.1. By pursis legal representatives of defendant No.1 were adopted written statement filed by original defendant No.1.
4. The legal representatives of defendant No.1, therefore, filed an application on 7 November 2017, seeking right to cross-examine the original plaintiffs witnesses and to lead evidence.
5. It needs to be noted that the suit was fixed for final argument when defendant No.1 died. The legal representatives of defendant No.1 having adopted written statement filed by original defendant No.1, cannot get more procedural rights than the defendant No.1 as on the date of his death; therefore, in my opinion, the Trial Court refusing to grant leave to legal representatives to cross-examine of the plaintiffs' witnesses and to lead evidence cannot be faulted. No interference is required under Article 227 of the Constitution of India.
6. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)