

SA Pathan

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

WRIT PETITION NO.14226 OF 2023

Jyostna Mohamadali Trainer & Ors ... Petitioners

V/s.

Vimal Jayantrao Patil (Since Deceased)

Through legal Heir & Ors. ... Respondents

SHABNOOR
AYUB
PATHAN
Digitally signed by
SHABNOOR AYUB
PATHAN
Date: 2023.11.29
14:04:11 +05'30'

Mr. S. M. Kelkar a/w Mr. Mahendra Agavekar a/w
Ms. Shraddha Chavan, for Petitioners.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 28, 2023

PC.:

1. The petitioners/original defendant Nos.1 to 6 are challenging order dated 5 August 2023, passed by the Trial Court allowing application on behalf of legal heirs of deceased/plaintiff.
2. The predecessors of respondent (original applicants) have filed Special Civil Suit No.920 of 2023 seeking cancellation of probate/heirship certificate and challenging validity of judgment passed in earlier round of litigation in petitioners favour.
3. It is not in dispute that the respondents/original applicants are legal heirs. However, according to petitioners, the original applicants are not legal representatives within the meaning of Section 2(11) of the Code of Civil Procedure, 1908 (for short 'CPC'). According to petitioners, filing of such suit amounts to

abuse of process of Court as the suit itself is not maintainable and neither the original plaintiffs nor added plaintiffs are entitled to any relief in the suit.

4. The Trial Court has allowed the application.

5. It is not in dispute that the newly added plaintiffs are legal heirs of original plaintiff. It is one thing to say that the plaintiff is not entitled to any relief in the suit. However, to adjudicate the status of a person as legal representative, the inquiry contemplated under Order 22, Rule 4 of CPC is to decide whether the right to sue survives on the legal representatives of the plaintiff. To hold such inquiry, the Court is required to adjudicate as to whether the legal representatives are entitled to succeed estate of deceased. The right to claim a declaration as sought in the prayer clause of the plaint is, in the facts of the case, estate of the deceased and, therefore, the original applicants being legal heirs are entitled to succeed such rights, in absence of testamentary disposition of rights of the plaintiff. Therefore, in the facts of the case, the legal heirs of original plaintiffs needs to be termed as legal representatives; however, permission to allow legal representatives to continue rights of the plaintiff would not mean that the legal representatives would be entitled to the relief prayed in the suit. It shall always be open for defendants to file an appropriate application raising issue of maintainability of the suit having resort of appropriate provisions of CPC. Therefore, in my opinion, no interference in the impugned order is called for as it does not suffer from error of jurisdiction.

6. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)