

ORDER BELOW EXH. NO.142 IN R.C.S. NO.378/2023

Narayandas Vs. State and others.

(Order Passed on this 28th Day of February, 2025)

CNRNO.MHLA170001362023

Defendants No.7/3 to 7/6 have filed application submitting that, delay has been caused to file their written statement as defendants No.7/3 to 7/6 have claimed to supply copies and documents from plaintiff. Thereafter, the Court has passed order to obtain the copies of documents on the pen drive. Till today no “No W.S.” order is passed against defendants No.7/3 to 7/6. Therefore, it is prayed by defendants No.7/3 to 7/6 that, they be granted permission to file their written statement.

2. Perused say of plaintiff. He has objected the application on the grounds that, defendants No.5, 6, 7/3 to 7/6 have filed their appearance pursis (Exh.79) through Adv. Shri. Bamankar and prior to that below Exh.68 on 08.11.2021. Address memo and V.P. below Exh.69 and 70 are filed by defendants alongwith defendants No.5 and 6. Later on application below Exh.71, 72, and 73 were rejected on 04.01.2022. Thereafter, V. P. is filed by defendants No.7/3 to 7/6 at Exh.81 through power of attorney defendant No.5 on 30.09.2024. Though application below Exh.73 was rejected. Defendants No.7/3 to 7/6 filed application below Exh.139 on 23.12.2024 and claimed time for filling written statement. Thus, the statutory period of 90 days is already over. Therefore, considering the conduct of defendants No.7/3 to 7/6 the application be rejected.

3. Heard learned counsels for both the parties. The learned counsel for defendants No.7/3 to 7/6 argued that defendants be granted opportunity to file their written statement to put up their

independent defence before the Court though they are legal heirs of deceased defendant No.7 Shardabai Jaju, as the suit is for perpetual injunction against defendants. Therefore, it is necessary to consider whether personal right of defendants No.7/3 to 7/6 are involved or not?

4. Learned counsel for defendants No.7/3 to 7/6 in support of his argument relied on the case of *Vidaywati Vs. Man Mohan, Special Leave Petition (Civil) No.9356 of 1995 D/d. 1.5.1995, Supreme Court of India*. It is held by the Honourable Supreme Court that, legal representative of defendants have all rights and defences available which were available to the deceased except those personal to him. However, if the legal representative of the deceased defendants wants to set up his independent right and title, he has to get himself impleaded as a party or to file an independent suit.

“The sub-rule (2) of Rule 4 Order 22 authorized 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.”

It is further held by the Honourable Supreme Court that, this being the position in law, the view of the Court below is perfectly legal. It is open to the petitioner to implead herself in her independent capacity under Order 1, Rule 10 or retain the right to file independent suit asserting her own right. We do not find any error of jurisdiction or material irregularity committed in the exercise of jurisdiction by the Court below warranting our interference. The S.L.P. is, accordingly, dismissed.

In the present suit defendants No.7/3 to 7/6 are appearing in their independent capacity. It is necessary to prove whether they are causing interference or obstruction to the plaintiff. Therefore, they being impleaded as defendants in the present suit. Thus,, written statement of defendants No.7/3 to 7/6 is also necessary to be considered for putting up their defence. Hence, the above discussed case is applicable to the present suit.

5. The learned counsel for the plaintiff argued that, defendant No.5 has appeared before this Court as a power of attorney holder of defendants No.7/3 to 7/6. Already defendants No.5, 6, 7/3 to 7/6 have appeared before the Court vide pursis Exh.79. However, they failed to file their written statement within statutory period of 90 days. Hence, the learned counsel for plaintiff prayed to reject the application.

6. Perused the record. The suit is too old. Defendants No.7/3 to 7/6 have appeared before Court. There is delay to file their written statement on record. It is necessary to consider their written statement as they are legal heirs of deceased defendant No.7. It is also necessary to decide whether they are causing interference or obstruction to the plaintiff in the suit land. Already defendants No.7/3 to 7/6 are impleaded as party to the suit. Therefore, they have right to file their written statement at this stage to put up their case before the Court and to put up their defence as per provisions of Order 22 (2) Rule 4 of the Civil Procedure Code and Order 1 Rule 10 of the Civil Procedure Code for the just decision of the suit. Therefore, considering delay caused by defendants No.7/3 to 7/6 to file their written statement their application is liable to be allowed

subject to imposing cost upon them. Therefore, I pass following order:-

ORDER

1. The application is allowed.
2. Defendants No.7/3 to 7/6 are granted permission to file their written statement on record subject to cost of Rs.1,000/-.
3. Cost amount be handed over to the plaintiff.

Date : 28.02.2025.
Place : Ausa.

(P. I. Mokashi)
Civil Judge Senior Division,
Ausa.