



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

FIRST APPEAL NO. 1144 OF 2026

Mirza Kaleem Baig Mahemood Baig And Anr.

VERSUS

The State Of Maharashtra

...

Advocate for Appellant : Mr. Vaibhav Nandkumar Shinde

Advocate for Respondent No.2 : Mr. P.F. Patni i/b Mr. P.P. Patni

WITH

CIVIL APPLICATION NO. 4608 OF 2026

IN FA/1144/2026

...

CORAM : ROHIT W. JOSHI, J.

DATED : OCTOBER 09, 2026

P. C. :

1. Present appeal is preferred under Section 294 of India Succession Act in order to challenge judgment and order dated 20.03.2026 passed by learned Joint Civil Judge Senior Division, Aurangabad in Civil M.A. No.828 of 2020, whereby learned Court has granted letter of administration with respect to suit property in favour of present respondent no.2, who had filed said proceedings for issuance of letter of administration under Section 218 of India Succession Act. The property is a house property of CIDCO situated within municipal limits of Aurangabad. The appellants are brothers of respondent no.2 in whose favour letter of administration is issued and respondent nos.3 to 6 are their sisters.

2. The suit property was belonging to mother of parties who

expired on 31.08.2020. The applicant/respondent no.2 is a eldest son. He is a retired government servant who is superannuated from the post of Executive Engineer in Public Works Department of Government of Maharashtra. The appellant no.2 is residing in suit house. The ground floor of property is presently lying vacant. It is not in dispute that the property was initially in possession of a tenant who is got vacated by original applicant. The appellant no.2/original respondent no.3 is in possession of ground floor and keys of the ground floor.

3. It is the contention of applicant/respondent no.2 that suit property was allotted to mother of the parties who expired on 31.08.2020. The applicant/respondent no.2 has stated that one of the conditions of allotment was construction of house property on the plot within stipulated time frame, since mother did not have funds to make construction, the construction of building on suit property was raised by him. It is also pleaded that mother intended to transfer the plot in his favour during her lifetime and expressed her desire to do so. However, it is not in dispute that the suit property is not actually transferred by mother in favour of the applicant/respondent no.2. The applicant has sought letter of administration with respect to suit property contending that having regard to his financial condition status as a formal government servant and the eldest son in the family, he was equipped to properly administer and look after the property and

accordingly sought letters of administration in his name.

4. All the four sisters have supported the application filed by their eldest brother, the applicant.

5. The present appellants, who are original respondent nos.2 and 3 opposed the application predominantly on the ground that the applicant was seeking interest adverse to the owner of property and, therefore, was not eligible to receive letters of administration. In the alternative, the contention was raised that letter of administration should be issued jointly with one of the brothers.

6. Learned Civil Court has after considering the pleadings and evidence on record allowed the application issuing letters of administration exclusively in the name of respondent no.2/original applicant. The said judgment and order is subjected to challenge in the present appeal.

7. Learned Civil Court has observed that since the applicant and respondent nos.2 and 3, the brothers were at logger heads with each other, it will not be desirable to issue joint letter of administration in their favour. With respect to contention that since the applicant was convicted in a criminal case under the provisions of Prevention of Corruption Act, 1981, learned Civil Court has found that the applicant was ultimately acquitted by this Court by allowing his appeal. It is also observed that in the civil cases character of a person is not a relevant

consideration in view of Section 52 of the Act. The question of title is not gone into by the Civil Court and rightly so since the same is beyond the scope of jurisdiction of the Court dealing with the application of letter of administration. It is observed by learned Civil Court that appellant no.2/non-applicant no.3, who was residing in the suit house has not been able to establish that he was making payment of property taxes and that photographs of the property which was marked as Exhibit-61 also indicate that the property was not properly maintained.

8. Learned advocate for appellants vehemently argues that a person who has set up the title over the property adverse to the interest of owner is not entitled to receive letters of administration. He further argues that in order to balance the equities, in the peculiar facts, joint letter of administration should have been issued by learned Court. It is also contended that since the order issuing letter of administration is a matter of discretion, the same should not have been issued in favour of applicant, since he was convicted in a criminal case, although he was subsequently acquitted by allowing his appeal.

9. Mr. Patni, learned advocate for respondent no.2/original applicant however defends the order by contending that issuance of joint letter of administration is repeatedly held to be not advisable by this Court. He contends that it is a consistent view of this Court that joint letter of administration particularly when the parties are at

dispute could not be issued. Mr. Patni also contends that although it is stated that the house property is constructed by the applicant from his own funds, he has never questioned the title of mother over the suit property. Mr. Patni also argues that appellant no.2 has keys of ground floor portion of the suit house and is in possession of first floor portion, as such, interest of appellants is sufficiently protected. He argues that the interest of all four sisters is also taken into consideration.

10. Having regard to the rival submissions as aforesaid, following points arises for my consideration :

- (I) Is the applicant not suitable for receiving letters of administration?
- (II) Whether joint letter of administration should be issued in favour of applicant and one of the brother?

11. This Court in a series of decisions repeatedly held that it is not advisable to issue joint letter of administration since that may create hindrance in the property. It is also held that issuance of joint letter of administration in cases of dispute should not be issued. In the present case, three brothers are at dispute with each other. They are not able to gel well together. The four sisters have reposed faith in the respondent no.2/applicant and support his prayer for issuance of letter of administration. One of the brother who is opposing the application is in physical possession on first floor portion of the house and keys of the ground floor portion are also with him and as such, can be said to be in

possession of ground floor portion of the property as well.

12. In the considered opinion of this Court, conviction under the Prevention of Corruption Act is immaterial in view of subsequent acquittal of the applicant and also because the sisters are reposing faith upon him. The contention that he has set up title adverse to the original owner of the property also cannot be accepted. The applicant has simply stated that mother desired to transfer the property to him during her lifetime which clearly means that title of the mother is not disputed. The issuance of letters of administration involves the matter of discretion. The findings recorded by learned Civil Court do not indicate that exercise of discretion is perverse. Learned Civil Court has properly taken into consideration all the facts relevant for considering an application for letters of administration and has accordingly, decided the same. Apart from this, it must be stated that interest of appellants as stated above is well protected.

13. It will also be pertinent to state that the act by itself imposes sufficient restriction on the person in whose favour letters of administration are issued which is a statutory safeguard for all the co-owners. Although the appellant no.2 is in possession of the suit property, Mr. Patni, learned advocate for respondent no.2/original applicant also makes a statement, on instructions, that respondent no.2 will not let out the suit property on lease for a period of less than five

years or induct any person in physical possession thereof without leave of the Court. For lease beyond the period of five years, the transfer Section 307(2) prohibits the same.

14. In view of the above, both points are answered in favour of respondent no.2/original applicant against present appellants/respondent nos.2 and 3. The appeal is therefore dismissed with no order as to costs.

15. It is however directed that in view of mandate to Section 307(3), a copy of Section 307(1) and 307(2) shall be annexed with letters of administration. The other statutory provisions will be followed scrupulously.

16. At this stage, learned advocate for appellants requests that issuance of letters of administration may be deferred for a period of six weeks in order to enable the appellants to approach the Hon'ble Supreme Court. Having regard to the reasons recorded by learned Civil Court, this Court is of the opinion that order passed in favour of applicant/respondent no.2 is just and proper and as recorded above, the matter involves discretion of learned Civil Court. Prayer of deferring issuance of letters of administration is therefore rejected.

17. Civil Application No.4608 of 2026 is also disposed of.

[ROHIT W. JOSHI J.]