

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

Writ Petition No. 1112 of 2014

(Abdul Mushtaq Abdul Khalil Vs. Central Bank of India Branch at Kapusatalni, Tq. Anjangaon Surji,
District Amravati through its Manager and ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Athalye, Advocate for the petitioner
Shri A. S. Deshpande, Advocate for respondent nos. 2 to 6

CORAM : Z. A. HAQ, J.

DATED : 13-4-2015

Heard Ms. Athalye, learned Advocate for the
petitioner and Shri A. S. Deshpande, learned Advocate for the
respondent nos. 2 to 6.

The petitioner-original plaintiff has filed this writ
petition challenging the order passed by the trial Court
allowing the application filed by the respondent nos. 2 to 6
and permitting them to come on record as the defendants.

The petitioner has filed the suit for declaration
that he is entitled for 2/3rd share in the amount lying in the
savings account of Abul Khalil Abdul Samad in the respondent
no. 1-bank. The petitioner has also prayed for permanent
injunction against defendant no. 1 restraining it from
transferring the amount in the name of original defendant
no. 2.

The petitioner-plaintiff has made the claim on the premise that he is the son of Abdul Khalil and original defendant no. 2. The original defendant no. 2 denied this claim of the plaintiff. The learned trial Judge has framed the issue as to whether the plaintiff proves that he is son of original defendant no. 2.

The respondent nos. 3 to 6 have filed the application (Exhibit 77) contending that the original plaintiff is not the son of Abdul Khalil and original defendant no. 2 but is their nephew. The respondent nos. 3 to 6 contended that Abdul Khalil died issueless. It is their contention that the original plaintiff is the real brother of the respondent nos. 3 to 6 and they are all sons of Abdul Jalil (brother of Abdul Khalil). In these circumstances, the respondent nos. 3 to 6 have sought to come on the record as defendants.

The trial Court allowed the application (Exhibit 77) filed by the respondent nos. 3 to 6 and the petitioner being aggrieved by the order has filed this writ petition.

If the respondent nos. 3 to 6 establish that the petitioner is their real brother and nephew of Abdul Khalil and that Abdul Khalil died issueless, then the respondent nos. 3 to 6 may be entitled for share in the amount claimed

by the petitioner. Looking to the nature of controversy and the claim as made by the petitioner, I find that the order passed by the trial Court is proper and it cannot be said that it suffers from any illegality or irregularity. It cannot be said that the trial Court has committed an error of jurisdiction which necessitates the interference by this Court in the extraordinary writ jurisdiction. The writ petition is dismissed.

Under the circumstances, the parties to bear their own costs.

JUDGE

wasnik