

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

WRIT PETITION NO. 5816 OF 2015

Smt. Madeena Abdul Rehman Shaikh

.... Petitioner

Versus

Shri Azim Abdulla Jalal & Ors.

.... Respondents

Mr. Sandesh Patil i/b Anusha Amin for petitioner.

Ms. Ulka Saranjame i/b. B.G.Ligade for respondent nos.1,3,4 & 5.

Mr. Sarang Aradhya for respondent no.6.

***CORAM : N. M. Jamdar J.
Wednesday 5 October 2016***

ORAL ORDER

. The petitioner has challenged the order dated 10 March 2015 passed by the learned Civil Judge Junior Division, Kalyan, wherein the application taken up by the petitioner for impleadment in Regular Civil Suit No. 245 of 2011 was rejected.

2. The respondents/plaintiffs have filed Regular Civil Suit No. 245 of 2011 in respect of the properties situated at Kalyan, district Thane. In the suit the respondents/plaintiffs have asserted that the properties are used as Kabristan only for the purpose of the

family members of respondents/plaintiffs and only the respondents/plaintiffs have a right of using the said property. It was contended that the respondent no.6/defendant-Trust was asserting its right in the suit properties and the persons claiming through the Trust were trying to interfere with the possession of the plaintiffs over the suit properties. In this suit, a written statement was filed by the defendant-Trust on 5 December 2013 accepting the claim of the respondents/plaintiffs. The petitioner made an application for impleadment on the ground that there have been previous adjudication in respect of the suit properties and for many centuries these properties have been used by the community. This application was considered by the learned Civil Judge and it was also contended by the petitioner that the plaintiffs and defendants are in collusion. The learned Civil Judge held that the existence of graveyard and Darga is not been disputed, only a relief of perpetual injunction is sought for and therefore, the petitioners are not necessary parties.

3. Heard learned Counsel for the parties. If the petitioner asserts any independent right other than being a devotee or a person interested in the affairs of the respondent-Trust, then it is needless to state the outcome of the proceedings, to which petitioner is not party, will not be binding on the petitioner. As far as the right of the petitioner as a devotee or a person interested

generally in the property as belonging to the community is concerned, the cause is represented by the defendant-Trust.

4. As far as the contention of the petitioner that the defendant and the plaintiffs are in collusion is concerned, it needs to be noticed that only one paragraph written statement is filed by the Trust, admitting the claim of the plaintiffs and the learned Civil Judge has kept the matter for decree on admission. The learned Counsel for the petitioner is justified in making a grievance that the defendant-Trust being a Public Trust under a duty to represent the cause of the persons interested in the affairs of the Trust. In the matters concerning with public trust, the Courts will have be guard to ensure that the trustees do not misuse their position and relinquish something in which the persons interested in the Trust are entitled to. The scheme of Maharashtra Public Trust Act envisages that care should be taken by the charity authorities as well as the Courts to safeguard the properties of the public trusts. Therefore, the learned Civil Judge before accepting the contention of the defendant-Trust simply admitting the claim of the plaintiffs at its face value, will have to be satisfied himself whether the Trust is acting bonafide in its stand and whether it is not relinquishing something to which the members of the community who are entitled to. Therefore, the learned Civil Judge will call upon the Trust to submit such documentation and earlier adjudications, if

any, to satisfy himself that the restraint on the community from utilizing the land is justified. Where the public trust is involved simply because the trustees file a written statement accepting the case of the plaintiffs, there cannot be a decree on admission without further application of mind. The Courts and charity authorities will have to also not as guardians of the properties of the public trusts. This being the position of law, a separate intervention from each devotee in a suit is not warranted. Therefore, even though the petitioner's application for impleadment has not been granted, the learned Civil Judge will go through the contents of the application which was made by the petitioner and if necessary, call upon the respondent-Trust to explain the same.

5. With these adequate safeguards having been provided, no interference in the impugned order is necessary. The Writ Petition is disposed of in above terms.

(N. M. Jamdar, J.)