

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7239 OF 2014
(Zubeda Sardar Shaikh Vs. Dilawarkhan Amirkhan Pathan and
others)

Mr.B.A.Darak, Advocate for the petitioner.
Mr.K.D.Jadhav h/f Mr.A.D.Ostawal, Advocate for respondent Nos.6
and 8C.
Mr.A.M.Gaikwad, Advocate for respondent Nos. 1 to 8.
Mr.A.P.Bhandari, Advocate for respondent No.8-b.
Mrs.M.A.Kulkarni, Advocate for respondent Nos. 2B and 2C.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 07/07/2017

PER COURT :

1. I have considered the submissions of the learned Advocates for the respective sides at length on 04/07/2017, 05/07/2017 and today.
2. The petitioner is aggrieved by the order dated 27/02/2014 by which application Exh.153 filed under Order 1 Rule 10 of the CPC seeking leave to be added as a respondent in Reg.Civil Appeal No.303/2000, has been rejected. By an ex-parte order dated 26/08/2014, this Court has stayed the appeal pending before the Appeal Court.
3. After this matter was heard on 04/07/2017 and 05/07/2017,

the petitioner was called upon to make a statement as to whether she is in possession of any land at issue and whether she has sold any portion of the said land. An affidavit dated 05/07/2017 has been filed before this Court by the petitioner wherein reported judgments are discussed and an old issue of more than 30 years with regard to the General Power of Attorney, has been sought to be raked up. The statements that were expected to be made have been conveniently avoided by the petitioner.

4. Mr.Darak, learned Advocate upon instructions from the petitioner and in the presence of the son of the petitioner, present in the Court, makes a statement which is recorded as under :-

- [a] The petitioner is not in possession of any portion of the land at issue or which can be said to have come to her share.
- [b] She is not cultivating any portion of land.
- [c] She has not sold out any piece of land which would be a matter at issue.

5. It is not in dispute that Aminabee was the title holder of the land which came to her share from her maternal side. By the first sale deed dated 23/04/1981, she has sold out the land admeasuring 2 acre and 15 R to the original defendant Nos. 6, 7, 8 and 9. After the demise of Aminabee, Mr.Darak contends that the remaining

share of Aminabee would be devolved in favour of the husband of Aminabee namely Syed Usman and the sons and daughters of Aminabee.

6, A second sale deed dated 12/12/1990 was executed by the husband and children of Aminabee through the General Power of Attorney Holder, to the extent of 2 acres and 27 R which is purchased by defendant No.13. By a third sale deed executed by the General Power of Attorney dated 12/07/1991, 87R were parted with. By a fourth sale deed, which is registered on 03/06/1992, the General Power of Attorney sold out 3 acres and 14R land. It is not disputed that all these sale deeds of 1981 till 1992 have not been challenged by any of the children of Aminabee in any Court of Law.

7. The grievance of the respondents opposing this petition is that the petitioner who is the daughter of Aminabee, desires to dig out the above mentioned 4 sale deeds on the pretext of claiming a share to the property as the legal heir of Aminabee. It is submitted that she cannot absolve herself of her participation in 3 sale deeds through the General Power of Attorney. The apprehension expressed by the respondents is that the petitioner is otherwise precluded from challenging any of the four sale deeds after a passage of 36 years to

25 years with respect to each of the sale deeds. If the petitioner is permitted to intervene in the appeal proceedings, she would not restrict herself to the claim of any share which may come to her by excluding all those areas of land which have been sold by Aminabee and by the General Power of Attorney.

8. The impugned order clearly indicates that the husband of Aminabee Syed Usman was brought on record in Spl.Civil Suit No.320/1990. Thereafter, he passed away and the appeal stood abated to his extent as he died during the pendency of the appeal. The petitioner never applied to the Court for joining as a party. Shabbir Syed Usman who is the son of Aminabai and Syed Usman was on record in the proceedings as one of the defendants.

9. The Trial Court has recorded that Shabbir had entered into a transaction of his property during the pendency of the litigation. As such, issue would be as to whether any portion of the suit property could still be said to possibly come to the share of Aminabee and as such, would it then be handed down to the applicant, save and except those portions of land which have already been sold out by 4 sale deeds. The only issue to the extent to which the petitioner could be permitted to be party to the pending appeal is as regards whether

after proper division, any inch of land would actually be a share of Aminabee beyond those portions of land which have already been sold out by the 4 sale deeds. To this limited extent, in my view, if the petitioner is not permitted to join the litigation, if at all any share still remains to be allocated to the legal heirs of Aminabee and especially the petitioner, the petitioner would lose a right to the same.

10. Considering the above, this petition and application Exh.153 are partly allowed by modifying the impugned order dated 27/02/2014. Consequentially, the petitioner would be permitted to be arrayed as respondent No.16 in the pending RCA No.303/2000. It is made clear that this petitioner, upon being added as defendant No.6, is not being permitted to open the issue of 4 sale deeds which have been noted hereinabove.

11. The amount of Rs.5,000/- deposited in this Court and which has accrued interest, shall be transmitted to the Advocate Associations' Bar Library, High Court, Aurangabad in the light of the gracious statement made by Mr.Darak and all the learned Advocates for the respondents.

12. Considering that the appeal is almost 17 years of age, the

Appeal Court shall endeavour to decide the said appeal, as expeditiously as possible and preferably on or before 31/03/2018.

13. The litigating sides would be precluded from seeking an adjournment on unreasonable and trivial grounds and the appeal Court would be at liberty to impose costs if such instances are noticed.

(Ravindra V.Ghuge, J.)