

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

WRIT PETITION NO. 7468 OF 2016

Smt. Jubeda Papabhai Inamdar ... Petitioner

Versus

Mr.Shamshuddin Pappubhai Mulani & Ors. ...Respondents

**WITH
CIVIL APPLICATION NO. 1172 OF 2017
IN
WRIT PETITION NO. 7468 OF 2016**

Smt.Jubeda Papabhai Inamdar ...Applicant

Versus

Mr.Shamshuddin Pappubhai Mulani & Ors. ...Respondents

**WITH
CIVIL APPLICATION NO. 1173 OF 2017
IN
WRIT PETITION NO. 7468 OF 2016**

Smt.Jubeda Papabhai Inamdar ...Applicant

Versus

Mr.Shamshuddin Pappubhai Mulani & Ors. ...Respondents

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Mr. Jaydeep Deo for the Petitioner/Applicant
Mr. Rawool M. Vijay for Respondent Nos. 1 to 5
Mr.Kavyal Shah for Respondent Nos. 10 to 11.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 7, 2017**

P.C.:

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.
2. “What's in a name? That which we call a rose by any other name would smell as sweet”. This famous quote of Shakespeare in Romeo & Juliet may be true in love and literature but not in law while deciding proprietary right especially of a married Indian woman, who failed to prove her maiden name. Both the trial and appeal Courts refused to *prima facie* accept that Jubeda Inamdar is a daughter of Hapu @ Dau @ Aabu Hussainbhai Mulani. The said finding needs to be reversed.
3. This petition is directed against the order dated 09.06.2016 passed by the learned Ad-hoc District Judge-5, Pune in Miscellaneous Civil Application No. 213 of 2016 as well as the order dated 04.04.2016 below Exhibit 5 passed by the 9th Jt. Civil Judge, Senior Division, Pune in Special Civil Suit No. 1206 of 2015 thereby rejecting the prayer that the defendants shall not create third party right in the suit property.

4. The petitioner / the original plaintiff had filed Special Civil Suit No.1206 of 2015 for partition and declaration that an agreement of sale dated 20.06.2014 executed between respondent Nos.1 to 5 and respondent Nos.10 to 11 is to be declared as void to the extent of share of the petitioner / original plaintiff which she claims by inheritance in her father's property. The relief of injunction is also prayed.

5. The petitioner/ original plaintiff and respondent Nos. 1 to 9 are Muslims and therefore, they are governed under Muslim Law of Inheritance. The petitioner/ original plaintiff claims her right in the suit property being a legal heir of one original owner Babanbhai Mulani. She avers that she is a great-grand-daughter of Babanbhai Mulani. She also claims the heirship through her father Hapu @ Dadu @ Aabu Hussainbhai Mulani, who was a son of Babanbhai Mulani and brother of Sayyedbhai Mulani. Respondent Nos. 1 to 9 are from the branch of Sayyedbhai Mulani, who was a real brother of her father Hussaibhai Mulani. According to her, some respondents have tried to dispose of the property by agreement of sale and therefore, she moved an application dated 19.09.2015 at Exhibit 5 against the respondents for interim relief.

The said application was rejected by the learned trial Judge and also the learned District Judge. Hence, this Writ Petition.

6. The learned counsel for the petitioner has submitted that the findings given by both the learned Judges that Jubeda i.e. the petitioner/ original plaintiff has failed to prove that she is the successor of Babanbhai Mulani is erroneous. He has further submitted that the petitioner/ original plaintiff has produced death certificate of her father Hussainbhai Mulani. She has also mentioned the genealogy of the family in the plaint. He has further submitted that one branch of Sayyedbhai Mulani had two sons viz. Pappubhai and Amubhai. Defendant no.1 / respondent no.1 Shamshuddin Pappubhai Mulani is a son of Pappubhai Mulani and he is main contesting party. However, the legal heirs of branch of Amubhai Mulani have supported the case of the petitioner/ original plaintiff that she is the legal heir of Babanbhai Mulani and the daughter of Hussainbhai Mulani. Respondent no.1, who is the main contesting party has illegally got his name alone mutated in the revenue record and this fact would have been given weightage. He has further submitted that the trial Court in fact has held that there is nothing on record to show that partition has taken

place and therefore, the property cannot be fallen in the share of respondent no.1 and other respondents. In support of his submission, he has produced photocopy of Wedding Invitation Card of Jubeda i.e. the petitioner/ original plaintiff. He has pointed out that in the Wedding Invitation Card her father's name appearing as Hussainbhai Mulani. He has also relied on the affidavits of the persons, family and friends, who have affirmed that Jubeda is the daughter of Hussianbhai Mulani.

7. The learned counsel for the respondents while opposing this Writ Petition has heavily relied on the observations made by both the learned Judges. He has submitted that both the Courts had passed concurrent orders, disbelieved that she is a daughter of Hussainbhai and rejected the relief prayed by the petitioner/ original plaintiff. He has further submitted that no documentary evidence has been produced by Jubeba i.e. the petitioner/ original plaintiff to show that she is the daughter of Hussainbhai Mulani and therefore, no relief was rightly granted, as this fact was not established. During the course of submissions, he has also suggested that the matter can be sent to mediation by this Court.

8. The trial Court has rightly observed that as per inheritance in the Muslim Law, sons and the daughters have right in the father's property. However, it has gone wrong in not accepting *prima facie* that the petitioner/ original plaintiff is the successor of Babanbhai Mulani through her father. As submitted by the learned counsel for the petitioner/ original plaintiff that the petitioner is 80 years old married lady and her name was showing as Judeba Inamdar. She claims to be the daughter of Hussainbhai Mulani. The lady is uneducated and therefore, she is unable to produce school record as it is not available or does not exist to show whose daughter she is.

9. Thus, the documents do not exist hence not available. The learned trial Court and the appellate Court ought to have taken into account the practical difficulty of an uneducated married woman, to prove her maiden name in the absence of documents. However, prior to 60 to 80 years ago, if the female has not taken education in the school, then it was difficult to get proof of her maiden name. The trial Court ought to have also taken into account that prior to 60 to 70 years, all the girls were not sent to the school. Similarly, some girls were deprived of education, as it was dependent on

class, community and also religion. It is difficult for an uneducated old married woman to prove the fact of the name of her natural father, as the name of the woman is changed after her marriage due to patriarchal system in our country. Under such circumstances, the learned Judges ought to have *prima facie* accepted the genealogy given by the lady and heavy burden to prove this fact is not to be cast on her.

10. On the other hand, an uneducated old man is accepted on face value as son of the father only because he carries his fixed name and surname throughout his life. In the peculiar set of these facts, the trial Court ought to have accepted the genealogy of the petitioner/ original plaintiff that she is the successor of Babanbhai Mulani through her father Hussainbhai Mulani. The petitioner/ original plaintiff was having the custody of death certificate of her father Hussainbhai Mulani, is also a material fact. Moreover, other branch of Amubhai Mulani, who is the cousin of the petitioner/ original plaintiff, has also supported her claim that she is the daughter of Hapu @ Dadu @ Aabu Hussainbhai Mulani. The name of the father is also seen on the wedding card.

11. Under such circumstances, I am of the view that the finding given by the learned subordinate Judges is illegal and the orders passed by both the learned Judges are illegal. The issue of her heirship can be framed by the trial Court and evidence can be tendered to that effect. However, *prima facie*, there is an evidence to show that she is the successor of Babanbhai Mulani through her father and therefore, the orders passed by both the learned Judges are set aside. The defendants are directed not to create any third party right in the suit property. The trial Court may consider and refer the matter for mediation and the parties may explore the possibility of amicable settlement. Writ Petition is allowed accordingly.

13. Civil Application No.1172 of 2017 which is filed to lead the additional evidence stands disposed off and the other Civil Application No.1173 of 2017, which is filed to strike out the defence is also disposed of without any order, as liberty is given to the petitioner/ original plaintiff to make such application before the trial Court.

(MRIDULA BHATKAR, J.)