

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2148 OF 2014

Sahajahan Begum w/o Md. Ali Age - 58 years, Occ - Agriculture R/o Sillod, Through General Power of Attorney Mohammad Ali s/o Mohd. Sharif Age - 63 years, Occ - Agriculture R/o Sillod, District - Aurangabad	PETITIONER
--	------------

VERSUS

1. Suraya Begum w/o Md. Shaukat Age - 50 years, Occ - Household R/o Sillod, District - Aurangabad 2. Pathan Abdul Hameed Khan s/o Abdul Majeed Khan Age - 40 years, Occ - Agriculture R/o Kotnadra, Taluka - Sillod District - Aurangabad 3. Pathan Abdul Waheed Khan s/o Abdul Majeed Khan Age - 37 years, Occ - Service R/o Mominpura, Sillod, Taluka - Sillod, District - Aurangabad 4. Pathan Abdul Qadeer Khan s/o Abdul Majeed Khan Age - 30 years, Occ - Service R/o Mominpura, Sillod Taluka - Sillod, District - Aurangabad 5. Pathan Abdul Azeem Rizwan Khan s/o Abdul Majeed Khan Age - 27 years, Occ - Business R/o Mominpura, Sillod Taluka - Sillod, District - Aurangabad	RESPONDENTS
--	-------------

.....

Mr. A. M. Gholap h/f Mr. A. S. Deshpande, Advocate for petitioner

Mr. Akram Inamdar h/f Mr. S. S. Kazi, for respondent No.1
Mr. J. V. Deshpande, Advocate for respondents No.2 to 5

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 19th JUNE, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. Mr. Gholap, learned advocate appearing for the petitioner vehemently contends that application Exhibit-72 filed by present respondents No. 2 to 5 purportedly for getting themselves impleaded as defendants in Special Civil Suit No. 245 of 2006 would not be maintainable and ought not to have been allowed and his request to have review of the order passed on Exhibit-72 ought to have been properly considered in the light of maintainability of application.

3. Mr. Gholap submits that having regard to the factual scenario, such an application in the suit for partition and separate possession of sister's property at the instance of the respondents, in the dispute *inter se* between petitioner and respondent No. 1, ought not to have been entertained. As such, the court had been in gross error in allowing application Exhibit-

72 and rejecting review application Exhibit-82.

4. He submits that sisters - plaintiff and deceased Noorjahan had equally inherited property left behind by their predecessor, almost thirty three years back. Both the sisters have enjoyed properties devolved on them equally as their absolute properties. He, therefore, submits that at such a belated stage while respondents No. 2 to 5 attempted to stake claim to the property, the same would not be maintainable under the pretext of inclusion sought pursuant to Order I, Rule 10 of the Civil Procedure Code.

5. Learned advocate purports to refer to table of shares as appended to Article 63 as contained in book by Mulla on "*Principles of Mohammedan Law*" 20th Edition, page - 66A. He submits that having regard to item 11 of the table, full sister would succeed to one half share left behind by deceased sister and her husband would get only one fourth share. He hastens to add that although the table may refer to one fourth share to husband of deceased sister, however, in the peculiar facts of the present case, husband of deceased Noorjahan may in peculiar situation succeed to one half share in the property left behind by her.

6. He, as such, purports to submit that while the situation is so, application Exhibit-72 in the present proceedings is absolutely foreign and uncalled for and could not have been allowed. He, therefore, submits that the court has been in gross error in allowing application Exhibit-72, in his estimate, rather too cursorily.

7. On the other hand, Mr. Deshpande, learned advocate appearing for respondents No. 2 to 5 submits that it is indisputable factual position that the property, which is claimed to have been equally devolved on plaintiff and deceased Noorjahan, was their father's - deceased Abdul Aziz's property.

8. Mr. Deshpande submits, going by the same table as is relied upon on behalf of the plaintiff - petitioner, the sisters would have succeeded at the most to two third share. He, therefore, submits that the application as has been made claiming share in property, as a matter of fact shows that the request under the application is not only legitimate, but also normally ought to come their way, pursuant to succession of properties under Muslim Personal Law.

9. He further goes on to submit that trial court, in its

discretion has considered that while the factual position is indisputable that the property had indeed been that of Abdul Aziz in such a case, presence of respondents No. 2 to 5 to be necessary and proper for final and effective adjudication of the matter, which is filed for partition of properties left behind by Noorjahan. He submits that while trial court has considered it to be expedient and necessary, and exercise of discretion is not being away from judicial principles and would rather arrest, to quite a large extent, multiplicity of proceedings, granting of application can seldom be faulted with.

10. Learned advocate Mr. Gholap during the course of submissions, refers to and relies on a decision of the Supreme Court in the case of *“Ramesh Hirachand Kundanmal V/s Municipal Corporation of Grater Bombay and Others”* reported in (1992) 2 MLJ 55. Learned advocate points out paragraph No. 6 of the judgment wherein the Supreme Court had adverted to the scope of discretion of the court. Having regard to considerations therein, it does not appear that the citation would carry forward the case for petitioner against grant of application Exhibit-72 and rejection of review application Exhibit-82.

11. Perusal of the impugned order shows that in paragraphs

No. 8 and 9 of the impugned order the trial court has taken stock of the factual as well as legal aspects involved in the matter. It has been considered presence of respondents No. 2 to 5 in the suit may be necessary and proper for final and effective adjudication of the *lis*. It does not appear to be a case that discretion so exercised requires any meddlesome approach in the present writ petition under discretionary powers of this court.

12. Writ petition is, therefore, dismissed. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]