

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Civil Application No. 00520 of 2019
(In Second Appeal No. 0737 of 2011)

District : Nanded

Mrs. Iqbal Begum
Wd/o. Sayyed Majid Razvi,
Age : 62 years,
Occupation : Household,
R/o. H.No. 18-14-17/4/B/31,
Near Owaisi School of Excellence,
Narqui Phoolbagh,
Chandrayangutta, Hyderabad. T.S.

.. Applicant.
(Intervenor)

Between

Mohd. Sajid Ali
s/o. Mohd. Munawarr Ali,
Age : 70 years,
Occupation : Agriculture,
R/o. Degloor,
Taluka Degloor,
District Nanded.

.. Appellant
(Original
plaintiff)

versus

1. Sd. Amjadali
s/o. Sd. Waliullah Huenisahab,
Age : 68 years,
Occupation : Nil.
2. Sd. Rahmatali
s/o. Sd. Waliullah Husenisahab,
Age : 52 years,
Occupation : Nil.
3. Najmunnisa Begum
w/o. Sd. Ashfaq Ali Saheb,
Age : 56 years,
Occupation : Nil.

... Contd.

4. Syd. Ikramoddin
s/o. Ashfaq Ali Saheb,
Age : 26 years,
Occupation : Nil.
5. Syd. Khalil
s/o. Ashfaq Ali Saheb,
Age : 24 years,
Occupation : Nil.
6. Syd. Juned
s/o. Ashfaq Ali Saheb,
Age : 22 years,
Occupation : Nil.
7. Asiya Begum
d/o. Sd. Ashfaq Ali Saheb,
Age : 21 years,
Occupation : Nil.
8. Maimuna Begum
d/o. Sd. Ashfaq Ali Saheb,
Age : 19 years,
Occupation : Nil.

All R/o. Shardanagar,
Degloor,
Taluka Degloor,
Dist. Nanded.
9. Mujibunnisa Begum
d/o. Sd. Mustafa Husiani,
Age : Major,
Occupation : Agriculture,
R/o. Nagar Galli Khila Road,
Nanded,
Taluka & Dist. Nanded.
10. Shaikh Ayyub
s/o. Shaikh Ali,
Age : 45 years,
Occupation : Business,
R/o. Degloor,
Taluka Degloor,
Dist. Nanded.

.. Respondents
(Original
defendants)

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Mr. P.G. Godhamgaonkar, Advocate, for the applicant.

Mr. P.R. Katneshwarkar & Mr. G.R. Syed, Advocates, for the non-applicant i.e. appellant in second appeal.

Ms. A.N. Ansari, Advocate, for non-applicants i.e. respondents no.01 to 10 in second appeal.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 06TH MARCH 2019

ORDER :

01. Present application has been filed by the sister of appellant for intervention and direction to add her as co-appellant.

02. Applicant, who is the sister of the appellant Mohd. Sajid Ali, contends that suit bearing RCS No.173 of 2010 was filed by Mohd. Sajid Ali for injunction. She is the daughter of one Mohd. Munawar Ali. The subject matter of the suit was Inam Property land bearing old S.No. 184 (new Gut No.344) as well as land bearing old S. No.237 (new Gut No.811) situated at village Degloor, Dist. Nanded. It is stated that it is a service inam for Masjid Tarabee Petamrapur at Degloor. Mohd. Munawar Ali was her father and last Muntkhab was granted in his name. He was to maintain the property of the Masjid including the suit lands. The said lands have been

recorded in the list of Wakfs in Hyderabad area of State of Maharashtra in Government Gazette dated 31-10-1974. Appellant / plaintiff had filed application for temporary injunction under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908, in the suit for restraining the defendants from alienating the suit properties. The said application was objected by the defendants contending that the application is not maintainable. The said application was rejected. Regular Civil Appeal No. 16 of 2011 was also rejected on the ground, it is not maintainable. Hence, the second appeal was filed. It is stated that the main question involved in the matter is that whether there can be alienation of service inam and that whether the suit restraining the alienation is maintainable. It is also stated that the succession to Inam land is regulated by Hyderabad Atiyat Enquiries Act, 1954. Section 12 of the said Act provides that the decision of Civil Court will prevail on question of succession. The appellant and respondents have moved the Second Appeal for withdrawal of the appeal proceedings. It is stated that now there is collusion between plaintiff and defendants. The said collusion is with intention to misappropriate property of Masjid. Masjid is meant for public service. If withdrawal is allowed, then the property given for service Inam would abolish. Applicant has moved the Court after getting knowledge about the collusion and design to misappropriate the property.

Applicant has, therefore, prayed for adding her as party i.e. co-appellant.

03. This application has been objected orally by the non-applicant (Appellant/original plaintiff) as well as by other non-applicants (Respondent/original defendants). It has been contended that present applicant has no interest or right in the suit properties. She has no locus standi to be included as co-appellant. It is the choice of the appellant to include any person as party to the appeal as well as such person who was party to the proceedings before the courts below is required to be added. The applicant was not party before the courts below.

04. Heard learned Advocate Shri P.G. Godhamgaonkar for the applicant, learned Advocate Shri P.R. Katneshwarkar for the non-applicant / plaintiff and learned Advocate Ms. A.N. Ansari for other respondents.

05. Learned Advocate for the appellant has taken me through the documents produced by the applicant, which include Government notification dated 31-10-1947 and 23-01-1975, copy of virasat statement with translation to show that the property was Inam land and its devolution is by succession. He submitted that now the appellant is willing to compromise the matter with defendants, which will affect the rights

of the applicant. Learned Advocate for the applicant has relied on the decision in ***Sikander Jehan Begum and another v/s. Andhra Pradesh State Government and others [AIR 1962 SC 996]***; wherein it has been held that, "Therefore by denying the petitioners the right to establish a claim in the Civil Court, type impugned provision of S. 13 (2) cannot be said to offend against Art. 14 of the Constitution".

06. It is to be noted that the original plaintiff had filed suit for permanent injunction. It was stated that Mohd. Munawar Ali s/o. Afjal Ali was owner and possessor of suit land. It was the service Inam land, for rendering service to Masjid Tarabi Peth, Amrapur at Degloor. Said Inamdar expired in 1963. Plaintiff has succeeded to the same after death of said Inamdar in the capacity as son. It was also contended that defendants are residents of Degloor, who had encroached on the suit land about 6-7 years prior to the suit. It was apprehended that defendants are trying to alienate the land and therefore, suit for permanent injunction. Present applicant is the daughter of plaintiff. At present she cannot claim any right or interest in the suit land, even if for the sake of arguments it is taken that devolution of right over suit land is by way of succession. Plaintiff is alive.

07. Secondly, the applicant has not stated under

which provisions of law she has filed present application. Learned Advocate for applicant submitted that it should be treated under Order I Rule 10 of the Code of Civil Procedure, 1908. Relevant part of said provision runs as follows :

“10. Suit in name of wrong plaintiff.- (1) *Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the Suit has been instituted through a bone fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.*

(2) *Court may strike out or add parties—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.*

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Applicant is not intending to invoke Order I Rule 10(1) of the Code of Civil Procedure, as she is not contending that the suit or appeal has been instituted in the name of wrong person. She wants to

take help of Order I Rule 10(2) of the Code of Civil Procedure. But in order to bring the application under this provision, she should show that her addition to the appeal is just or the appellant (plaintiff) is improperly joined or she ought to have been added / joined. Unless she shows that she has right or interest in the properties, she cannot be added. Applicant contends that she is also Inamdar and the application for succession is pending before the competent authority. It is to be noted that yet her said application, if at all she has filed, has not been decided. Any way, she would be claiming through her father, if at all she can claim. When plaintiff himself has filed the appeal, she cannot insist on being joined as co-appellant. She has not come with a case that she may be joined as respondent. Her prayer would show that she wants rejection of the compromise. She cannot pray it, if she is made respondent. Applicant cannot impose upon appellant / plaintiff to join her as co-appellant. Whether to accept the compromise between the appellant and respondents is a different question. Unless the said compromise is legal, it cannot be allowed. Therefore, if applicant wants to get herself added in anticipation of something, then that cannot be allowed, unless it is shown that she is the necessary party to the proceedings.

08. It cannot be forgotten that in the suit

filed by present appellant / plaintiff, the plaint has been rejected under Order VII Rule 11(a) and (d) of the Code of Civil Procedure. The said decree has been upheld by the first appellate Court. The ratio laid down in **AIR 1962 SC 996** (*supra*) cannot be disputed; however, it has been also held that, *"Therefore, even under the Circulars issued by the Nizam for holding enquiries into the questions of succession to Jagirs, the position appears to be clear that jagirs were not heritable and on the death of the Jagirdar, on principle and in theory, it was always a case of resumption and regrant. If that so, any person who claimed to be the successor of the deceased Jagirdar had no right to come to a Civil Court for establishing that claim"*. Under such circumstance, it will not be in the interest of parties to allow the applicant to add as co-appellant, when she has no interest or right at this time.

09. Hence, the following order :

Civil application No. 00520 of 2019 is hereby dismissed. No order as to costs.

(**Smt. Vibha Kankanwadi**)
JUDGE

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(Contd. on page 10)

10. Learned Advocate appearing for the applicant, after pronouncement of the order, submitted that further proceedings in the second appeal be deferred, since he has been instructed and the parties want to approach the higher forum.

11. It is to be noted that the present applicant had filed the application for adding her as co-appellant in the second appeal. Under such circumstance, when the application has been dismissed, the applicant has no locus standi to have any prayer in respect of the main matter. Hence, the oral prayer made on behalf of the applicant is hereby rejected.

12. Parties to act on an authenticated copy of this order.

(Smt. Vibha Kankanwadi)
JUDGE

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