

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4587 OF 2009

ABDUL KARIM ALIAS NAWAB ABDUL AND ORS
VERSUS
PASHABEGUM KHALIL AHMED AND ORS

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Advocate for Petitioners : Shri V.J.Dixit, Sr. Adv.
i/b Smt. Charuta Deshmukh

Advocate for Respondents 1 & 2 : Shri P.V.Mandlik, Sr. Adv.
i/b Shri P.P.Mandlik & Shri G.R.Syed

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 20, 2019

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PER COURT :-

1. I have considered the strenuous submissions of the learned Sr. Advocates Shri Dixit on behalf of the petitioners and Shri Mandlik on behalf of respondent Nos.1 and 2. The learned Advocates appearing on behalf of respondents 3 & 4 are consistently absent on the last two dates and even today.

2. The learned Advocate for the petitioners have relied upon the following judgments delivered by this Court:-

i. M/s Mahadkar Agency and another Vs. Padmakar Achanna Shetty - 2002(4) All M.R. 352 and

ii. Anil Dinmani Shankar Joshi Vs. Chief Officer, Panvel Municipal Council and others - 2003 (2) All M.R. 24.

3. The record reveals that Special Civil Suit No.45 of 1999 was filed by three plaintiffs, who are respondent No.3 in this petition. On 30.4.2002, an application Exhibit 90 was filed by Pasha Begum and Razia Begum / plaintiffs 1 and 3, making a request to the trial Court to allow them to withdraw themselves from the suit. Apparently, no say was called on the said application (Exhibit 90) from the defendants. I find that though the petitioners therein contend that it was a purshis, Exhibit 90 does not appear to be a purshis and in fact, the prayer clause indicates that the permission of the Court was sought by plaintiffs 1 and 3 to withdraw themselves from the suit.

4. The trial Court has passed an order on 13.4.2005, which is almost after three years, considering Exhibit 90 to be a purshis. By the said order, the withdrawal purshis is allowed. It is stated that defendants 1 to 4 and 12 to 20 have given their no objection and defendant 6, who has filed a counter claim, had prayed for rejecting Exhibit 90. Though the certified copy of Exhibit 90 and the order dated 13.4.2005 are placed on record, they do not indicate any written say of any of the respondents.

5. On 30.12.2008, Pasha Begum filed application Exhibit 161, praying to the trial Court that a fraud was played upon her by her brothers, who are defendants and she has signed on a blank paper. It

was represented to her that it would be an adjournment application. A withdrawal statement was typed subsequently on Exhibit 90 and on account of the fraudulent act of the brothers, the trial Court allowed Exhibit 90 on 13.4.2005. There was no verification before the Court, while passing the order below Exhibit 90. Hence, in this backdrop, the trial Court exercised its powers under Section 151 of the Code of Civil Procedure (CPC) and by order dated 21.3.2009, the order dated 13.4.2005 was recalled.

6. I find from Exhibit 161 that the said application was specifically filed by Pasha Begum. Verification to Exhibit 161 is also by Pasha Begum alone. Razia Begum has not moved any application. Though served by Court notice, Razia Begum has not entered an affidavit-in-reply in this petition to adopt the same stand taken by Pasha Begum.

7. In the matter of M/s Mahadkar Agencies (supra), this Court has concluded that any plaintiff can claim a right to abandon or withdraw the suit and such a litigant cannot be compelled to continue with the suit. This judgment, therefore, is of no assistance to the petitioner.

8. In Anil Joshi (supra), this Court has concluded that once a

plaintiff tenders an unconditional withdrawal purshis, the Court may pass a formal order recording the withdrawal and also make an order regarding costs. In my view, in order to avoid any fraud being played on any litigant or even any Court, the Presiding Officer of the Court, to say the least, must atleast carry out a verification and find out whether the litigant really desires to withdraw a suit by himself. It is now settled that a vakilpatra executed by a litigant to enable an Advocate to appear in the matter is not meant for granting blanket authority to the Advocate to withdraw any claim or relinquish any right on behalf of a litigant.

9. From the order dated 13.4.2005, I do not find that the then learned Judge has taken the pains to find out by verification, as to whether Pasha Begum and Razia Begum are giving up their entire claim to the suit property, though they have filed the suit for seeking partition of the rights of the three brothers and the three sisters. The stand taken by Pasha Begum that she was defrauded by the brothers is visible from Exhibit 161, which she has filed, though after three and half years, making out a case that her brothers had defrauded her to grab her share. Even today, Pasha Begum represented by an Advocate in this Court, states on the basis of her affidavit-in-reply that she never intended to relinquish her share in favour of her brothers. Conspicuously, Razia Begum has neither filed any

application before the trial Court, nor has she filed an affidavit-in-reply in this matter to take a stand that even she was defrauded.

10. I find it quite ironically that biological brothers and sisters, for the sake of the share in the property, are litigating and the brothers are being alleged to have played a fraudulent role.

11. Considering the above, this petition is partly allowed by observing that the impugned order passed by the trial Court, dated 21.3.2009, below Exhibit 161 is set aside only to the extent of Razia Begum considering the facts and circumstances as recorded above. Rule is made partly absolute in the above terms to the extent of Razia Begum. The impugned order is sustained to the extent of Pasha Begum and this petition is dismissed to her extent.

12. Needless to state, the parties to the litigation before the trial Court are at liberty to request the trial Court to refer the matter to the Mediation Center at Jalna District Court so as to explore an amicable settlement between these six biological brothers and sisters, notwithstanding that Razia Begum has not sought the restoration of her claim.

13. By the consent of the parties, RCS 329 of 2008 is expedited

and by including the probable period of two months for mediation, the said suit shall be decided on/or before 30.4.2020.

14. The learned Advocates for the respective sides submit on instructions, that none of them would alienate any suit property or create encumbrances thereon, till the suit is decided. This would apply to all the litigating parties, whether they are present before this Court or not.

(RAVINDRA V. GHUGE, J.)

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