

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

Civil Application No. 14977 of 2018
(In Second Appeal No. 0737 of 2011)

District : Nanded

1. Mohd. Imtiaz Ali s/o. Mohd.
Sajid Ali,
Age : 56 years,
Occupation : Driver.

2. Mohd. Zakir Ali s/o. Mohd.
Sajid Ali,
Age : 53 years,
Occupation : Retired A.S.I.
Police.

Both R/o. Rajai Colony,
near old Petrol Pump,
Degloor, Taluka Degloor,
District Nanded.

.. Applicants

Between

1. Mohd. Sajid Ali s/o. Mohd.
Munawarr Ali,
Age : 70 years,
Occupation : Agriculture,
R/o. Degloor,
Taluka Degloor,
Dist. 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.
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 applicants.

Mr. P.R. Katneshwarkar & Mr. G.R. Syed, Advocates, for non-applicant no.01 (appellant in SA).

Ms. A.N. Ansari, Advocate, for non-applicants no.01 to 10 (i.e. respondents no.01 to 10 in SA).

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the order : 24th January 2019.**

**Date of pronouncing
the order : 22nd February 2019**

ORDER :

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

02. Applicants, who are the sons of appellants contend that suit bearing RCS NO. 173 of 2010 was filed by their father / appellant in Second Appeal No. 737 of 2011 against the respondents / defendants for injunction. 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. One Mr. Munawarali was father of Sajid Ali 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 dt. 31-10-1974. Appellant / Plaintiff had filed application for temporary injunction under O. 39 r. 1 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. Reg. 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 proceeding. 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. Applicants have moved the Court after getting knowledge about the collusion and design to

misappropriate the property. Applicants have therefore prayed them for adding them as party i.e. Co-appellants.

03. This application has been objected orally by the non-applicant No. 1 (Appellant / original plaintiff) as well as by other non-applicants (Respondent / original defendants). It has been contended that present applicants have no interest or right in the suit properties. They have no locus standi to be included as co-appellants. It is the choice of the appellant to include any person as party to the appeal as well as those persons who were the party to the proceeding before the Courts below are required to be added. Applicants were not the party before the Courts below.

04. Heard learned Advocate Shri. P. G. Godhamgaonkar for applicants, learned Advocate Shri. P. R. Katneshwarkar for non-applicant/ plaintiff and learned Advocate Ms. A. N. Ansari for other respondents. Learned Advocate for appellant has taken me through the documents produced by the applicants, which include Government notification dt. 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

applicants. Learned Advocate for applicants 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".

05. It is to be noted that the original plaintiff had filed suit for permanent injunction. It was stated that one Md. 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 applicants are the sons of plaintiff. At present they can not 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.

06. Secondly, applicants have not stated under which provisions of law they have filed present

application. Learned Advocate for applicant submitted that it should be treated under O. 1 r. 10 of Code of Civil Procedure. 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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Applicants are not intending to invoke O. 1 r 10 (1) of Code of Civil Procedure, as they are not contending that the suit or appeal has been instituted in the name of wrong person. They want to take help of O. 1, r 10 (2) of Code of Civil Procedure. But in order to bring the application under this provision they should

show that their addition to the appeal is just or the appellant (plaintiff) is improperly joined or they ought to have been added / joined. Unless they show that they have right or interest in the properties, they can not be added. They would be claiming through plaintiff only and therefore, when he himself has filed the appeal, they can not insist on being joined as co-appellants only. They have not come with a case that they may be joined as respondents. Their prayer would show that they want the rejection of the compromise, therefore, they can not pray it, if they are made respondents. Applicants can not impose upon appellant / plaintiff to join them as co-appellants. Whether to accept the compromise between the appellant and respondents is a different question. Unless the said compromise is legal, it can not be. Therefore, if applicants want to get themselves added in anticipation of something, then that can not be allowed, unless it is shown that they are the necessary parties to the proceedings.

07. It can not be forgotten that in the suit filed by present appellant / plaintiff, the plaint has been rejected under O. 7 r. 11 (a) and (d) of 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) can not 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 applicants to add as co-appellants, when they have no interest or right at this time. Hence, following order.

ORDER

Civil application No. 14977 of 2018 is hereby dismissed. No order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

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