

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

WRIT PETITION NO.9735 OF 2019

Dastagir Allbaksha Fakir and Ors. ... Petitioners
Vs.
Khatunbi Babaso Mulla-Mullani and Ors. ... Respondents

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Mr. Suryajeet P. Chavan for the petitioners.
Mr. Pandit Kasar for respondent Nos.1 to 3.
Mr. F.A. Wasif for respondent No.4.

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CORAM : M. S. KARNIK, J.

DATE : 19th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioners.
2. The petitioners third party made an application under Order 1 Rule 10 of the Code of Civil Procedure in Regular Civil Appeal No.55 of 2014 for impleading them as party respondents. The petitioners claim to be the children of Jaharabi Abubkar Mullani. The petitioners filed an application below Exhibit 34 for impleading them as party respondents. The plaintiffs present respondent Nos.1 to 3 are the legal heirs of Babaso Mulla-Mullani. It is the case of the plaintiffs that Dadu Ali Mullani

executed gift deed in favour of Babaso and Bal the sons of Abubkar. On the basis of gift deed dated 28.7.1952 the plaintiffs filed a suit claiming half share in the suit property. The Trial Court decreed the suit and by the decree granted 19/24th share to the plaintiffs in the suit property. Being aggrieved by the decree, the plaintiffs- present respondent Nos.1 to 3 filed the Appeal.

3. During the pendency of the Appeal the petitioners filed an application Exhibit 34 for impleading themselves contending that the petitioners are children of Jaharabi Abubkar Mullani. Jaharabi Mullani is sister of Babaso and Bal. It is therefore the contention that they are entitled to share in the suit property, the petitioners being the legal heirs of Jaharabi who is daughter of Dadu Ali Mullani. Learned counsel for the petitioners submitted that petitioners did not implead Jaharabi as party defendant though she is entitled for share in the suit property. The Appellate Court dismissed the application for the reasons recorded in the order holding that the petitioners are not necessary parties.

4. It is submitted that during the life time of Jaharabi no

application was made by her to implead herself as party respondent. It is only after the death of Jaharabi on 16.6.2017 the application came to be made on 6.10.2018. Apart from this it is submitted that on the basis of gift deed executed on 28.7.1952 in favour of Babaso and Bal, the suit property is to be partitioned between Babaso and Bal only. The petitioners have no concern or interest in the suit property.

5. I have gone through the order passed by the Appellate Court. The suit filed by the plaintiff is for partition. The suit is not on the basis of the gift deed dated 28.7.1952 but the plaintiffs are claiming right of inheritance in the property of Dadu Ali Mullani they being the legal heirs. Whether the petitioners are entitled to share in the suit property or not can always be decided when the Appeal is heard finally. There is no dispute that Jaharabi is sister of Babaso and Bal and the daughter of Dadu Ali Mullani. The parties are claiming a share in the suit property which is originally belongs to Dadu Ali Mullani. Also the question Whether the plaintiffs are entitled to share in the suit property by gift deed dated 28.7.1952 is a matter which can be decided by the

Appellate Court. At this stage when the petitioners have come out with a case and there is no dispute that they are legal heirs of Jaharabi, in my opinion, the application for impleadment deserves to be allowed. No doubt there is a delay on the part of the petitioners in approaching the Appellate Court. The respondents can be adequately compensated with cost as no prejudice would be caused if petitioners are impleaded. Subject to cost of Rs.5,000/- to be paid by plaintiffs, the Petition is allowed. Learned counsel for the respondent Nos.1 to 3 graciously submits that he has no objection if some part of the cost to be paid to Kirtikar Law Library. According to him, the petitioners may pay a sum of Rs.2,500/- to the Kirtikar Law Library and Rs.2,500/- to the respondents. Cost to be paid accordingly. The cost to be paid within a period of two weeks from today.

6. The petition is allowed. The impugned order is set aside. Application Exhibit 34 is allowed.

(M. S. KARNIK, J.)