

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6885 OF 2021

Raziyuddin s/o Mohd. Naziruddin,
Age 52 Occupation Business,
R/o. Precession Tower, Sher Gate,
Kind Kothi, Hyderabad.

... **Petitioner.**

VERSUS.

- 1) Rama s/o Dashratha Jadhav,
Age 62 years, Occ. Agriculture,
R/o. Badpura, Nanded died
through legal heirs.
- 1/1) Subhash s/o Rama Jadhav,
Age 56 years, Occ. Service.
- 1/2) Khandu s/o Rama Jadhav,
Age 46 years, Occ. Service.
- 1/3) Omprakash s/o Rama Jadhav,
Age 39 years, Occ. Private service.
- 1/4) Kondabai w/o Raosaheb Shinde,
Age 38 years, Occ. Household.
- 1/5) Vimlabai w/o Uttam Kavle,
Age 52 years, Occ. Household.
- 1/6) Arun w/o Sambhaji Shinde,
Age 41 years, Occupation
All Resident of Dantiwala Petrol
Pump New Mondha, Nanded.
- 2) Sheshrao s/o Dashratha Jadhav,
Age 50 years, Occ. Agriculture,
R/o. New Mondha, Nanded.
- 3) Anusabai w/o Dashratha Jdhav,
Age 70 years, Occ. Household,
R/o. New Mondha, Nanded.
- 4) Mohammed Hamiduddin s/o

Basheeruddin, Age 52 years, Occ.
Agriculture, R/o. Nanded, died
through legal heirs.

- 4/1) Md. Raispasha s/o Mohd. Hamiduddin
Age 29 years, Occupation Service.
- 4/2) Ayubuddin s/o. Md. Hamiduddin,
Age 24 years, Occ. Education.
- 4/3) Nasiruddin s/o Mohd. Hamiduddin,
Age 21 years, Occ. Education.
- 4/4) Khadiruddin s/o Mohd. Hamiduddin,
Age 18 years, Occ. Education.
- 4/5) Aminabegum w/o Md. Hamiduddin,
Age 55 years, Occupation Household,
and Agriculture, all r/o. Hingoli
Gate, Nanded.
- 5) Mohammed Moinuddin s/o Basheeruddin
Age 50 years, Occupation Agriculture,
r/o. Pandurna Taluka , Bhokar, Dist.
Nanded. Died through legal heirs.
- 5/1) Surayya Begum wd/o Mohd. Moinoddin,
Age 52 years, Occ. Agriculture and
Household.
- 5/2) Azharoddin s/o. Mohd. Moinoddin,
Age 24 years, Occ. Agriculture.
- 5/3) Alfazoddin s/o Mohd. Moinuddin,
Age 22 years, Occ. Agriculture.
- 5/4) Ibrahimoddin s/o. Mohd. Moinoddin,
Age 20 years, Occupation Agriculture,
All r/o. Vill, Pandurna, Tq. Bhokar,
Dist. Nanded.
- 6/2) Dr. Mohd. Anwaroddin s/o Mohd. Nuruddin,
Age Major, Occupation Doctor.
- 6/3) Dr. Aliyoddin s/o. Mohd. Nuruddin,
Age 52 years, Occupation Doctor.

- 6/4) Dr. Mushiroddin s/o. Mohd. Nuruddin,
Age 50 years, Occ. Doctor.
- 6/5) Dr. Vikharoddin s/o. Mohd. Nuruddin,
Age 48 years, Occ. Doctor.
Defendant Nos. 7/2 to 7/5 are
represented through their general power
of attorney holder Mubasshir s/o Alam
Khan, age Major, Occ. Business, r/o.
Rohilla Galli, Aurangabad.
- 7) Rampyaribai wd/o Pratapsingh,
Age 56 years, Occ. Household,
R/o. Mogul House, Block No. 6 N,
Vt. Joshi Marg, Bombay-400 011.
Died through legal heirs.
- 7/1) Tarasingh s/o. Pratapsingh Corporator,
resident of Pratapsing Estate,
Lal Bahadur Shastri Marg (Bhandup)
Bombay – 400 014.
- 8) Mohammed Nuruddin s/o Naziruddin
Shaikh, Age 72 years, Occ. Agriculture,
R/o. Nagar Galli, Nanded, died through
legal heirs.
- 8/1) Mohammed Naziruddin s/o. Mohd. Nuruddin,
Age 68 years, Occupation Retired
Resident of H.No. 285, Block No. 21,
Labour Colony, Nanded.
Died through legal heirs.
- 8/1/1) Layiqunnisa @ Farimunnisabegum,
wd/o Mohammed Naziruddin,
Age 62 years, Occupation Household.
- 8/1/2) Merajoddin s/o. Mohd. Naziroddin,
Age 43 years, Occupation Business.
- 8/1/4) Farhinabegum d/o Mohd. Naziruddin,
Age 38 years, Occupation Household.
- 8/1/5) Husanabegum d/o Mohd. Naziruddin,
Age 35 years, Occupation Household,

All Resident of H. No. 285, Block No. 21,
Labour Colony, Nanded.

Second address :

All resident of H. No. 6-2-684/B/V/38

Durga Enclave Road No. 12,

Banjarahills, Hyderabad, District

Hyderabad (A.P), at present Telangana.

... **Respondents.**

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Advocate for the Petitioner : Ansari A.N.

Advocate for the respondents No. 1/1 to 1/6, 2 : Mr. Sharad V. Natu.

CORAM : **MANGESH S. PATIL, J.**

DATE : **02.09.2021.**

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. Learned advocate Mr. Natu appears on behalf of respondent Nos. 1/1 to 1/6 and respondent No. 2. The learned advocate Ansari points out that the respondent No. 3 had not filed any say to the application on which the impugned order is passed. Whereas the rest of the respondents are formal parties and therefore the petitioner does not want any relief against them.

3. The petitioner is the original defendant No. 5/1/3 in Regular Civil Suit No. 1007/1989 pending on the file of learned Civil Judge Senior Division, Nanded, impugning a common order passed by the learned Judge rejecting four applications (Exhs. 531, 535, 536 and 537).

4. By way of Application (Exh. 531) the two daughters of the plaintiff No. 1/5 who died on 13.10.2020 prayed to come on record as her legal representatives. This application has been rejected even though the contesting defendant Nos. 1 to 3 i.e. the respondent Nos. 1 to 3 herein had raised no objection. However, the two daughters of the plaintiff No. 1/5

who had preferred that application have not challenged the order and therefore to the extent the impugned order rejects that application, it cannot be questioned.

5. So far as the application (Exh. 535) is concerned, it was filed by the petitioner who has filed a counter claim to array in the counter claim purchasers who have purchased some portions of the suit property from the respondent Nos. 1 to 3. The learned advocate Ms. Ansari for the petitioner points out that the defendant Nos. 1 to 3 i.e. respondent Nos. 1 to 3 herein in their written statement had specifically raised dispute as to how these purchasers and even the State Government, since the transaction of purchase by them was with permission of the State, were necessary parties to the suit. She would submit that by way of counter claim the petitioner is now claiming possession of the suit property and to obviate any obstruction at the behest of these purchasers they need to be brought on record.

6. By way of application (Exh. 536) the petitioner sought setting aside of abatement of the counter claim pursuant to the death of plaintiff No. 1/5 in the suit who is defendant No. 1/5 in the counter claim Aminabegum on 13.10.2020. By the application (Exh. 537) after setting aside the abatement her two daughters are also sought to be brought on record as defendants in the counter claim.

7. Learned advocate Mr. Natu submits that the objection as to the non-joinder of these purchasers and the State has been raised in the written statement filed in the suit and not in the counter claim. He would further submit that simplicitor adding these persons as a party defendants in the counter claim would not suffice in as much as no consequential amendment is being sought to be made in the counter claim seeking any relief from any of these purchasers or the State. He would further submit that the whole attempt by the petitioner is to prolong the litigation. Whatever has been omitted to be claimed in the suit is now being sought to be added by way of

the counter claim. The relief being claimed in the counter claim itself is not maintainable. Couple of times this Court had expedited the suit but at every stage the petitioner and the other parties be the plaintiffs or the defendants in the suit or the counter claim, attempt is being made to protract the litigation. The very declaration being claimed that the compromise arrived at in the Supreme Court is void since it was executed for and on behalf of the his own father is not tenable. He would, therefore, submit that taking note of such dilatory tactics the learned Judge has rejected the applications (Exhs. 531, 535 to 537) by the impugned order and there is no illegality.

8. It is necessary to note that the petitioner was allowed to file the written statement by virtue of a liberty granted by this Court by the order dated 03.03.2020 in Writ Petition No. 2799/2020. Once he was allowed to file a written statement, one cannot take any objection to the filing of the counter claim by him. The question as to the maintainability of such a counter claim would always remain open, but can only be decided at the trial and no opinion can be expressed about it in this proceeding.

9. Since the petitioner is the *dominus litis* vis-a-vis his counter claim is concerned, since Aminabegum who is the defendant No. 1/5 in the counter claim has died, the request to bring her two daughters on record in the counter claim in my view is innocuous. Similarly, since the petitioner in his counter claim is also claiming possession of the suit property which even according to contesting respondent Nos. 1 to 3 was sold in a piecemeal manner to some third persons, the petitioner would want to include them in the array of defendants in the counter claim for the obvious reason that there should not be any obstruction at their behest if at all he succeeds in getting the decree for possession. If and for what relief ultimately the petitioner would be entitled to cannot be prejudged. The fact remains that the respondent Nos. 1 to 3 in their written statement filed in the suit have specifically averred about some portions of the suit property having been sold to these persons who are sought to be added in the counter claim.

Consequently, the request to bring on record these purchasers one of which is already in the array of the defendants (defendant No. 5) in the counter claim, I find no sufficient and cogent reason to refuse to concede to the request of the petitioner to bring on record these purchasers, the State Government as also the two daughters of deceased defendant No. 1/5 in the counter claim.

10. The learned Judge while passing the impugned order seems to have rejected all these requests in all probability swayed by the time limit fixed by this Court in deciding the suit. In my view, the approach of the learned Judge in taking up all these applications together for decision and rejecting them by the common order itself is demonstrative of the fact that in all probability he was prejudiced by the fact that these applications were being filed which according to him were intended to protract the litigation.

11. Consequently, the impugned order to the extent it rejects the applications (Exhs. 535, 536 and 537) is quashed and set aside and the three applications stand allowed as prayed for. Necessary amendment to be incorporated within three weeks.

12. Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

mkd/-