

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2118 OF 2018

- PETITIONERS:**
1. Karim Khan Mohd. Khan (Dead)
by L.Rs.
 - 1-a] Hasina Begum Karim Khan
Aged 70 years, Occ. Household.
 - 1-b] Dr. Naushad Khan Kareem Khan,
aged 54 years, Occ. Medical Practitioner
 - 1-c] Nahid Khan Karim Khan,
aged 53 years, Occ. Business,
 - 1-d] Nasrin Khan Karim Khan,
aged 51, Occ. Household.
 - 1-e] Nikhat Khan Karim Khan,
aged 49 years, Occ. Household.
 - 1-f] Masarat Khan Karim Khan,
aged 48 years, Occ. Household,
 - 1-g] Khudusin Khan Karim Khan,
aged 46 years, Occ. Household,
 - 1-h] Zinat Khan Karim Khan,
aged 44 years, Occ. Household,
 - 1-i] Firdosiya Khan Karim Khan,
aged 42 years, Occ. Household,
 - 1-j] Talat Khan Karim Khan,
aged 40 years, Occ. Household,
 - 1-k] Tayyab Khan Karim Khan

aged 38 years, Occ. Household,

1-l] Kaikashya Karim Khan,
aged 36 years, Occ. Household,

1-m] Hasrat Khan Karim Khan,
aged 34 years, Occ. Household,

1-n] Ajaman Khan Karim Khan
aged 32 years, Occ. Household,

Nos. [1-a] to [1-n] all R/o. M.J.Phule Road,
Deulgaonraja, Tah. Deulgaonraja, District
Buldhana

...VERSUS...

- RESPONDENTS:**
1. Syd. Hafizoddin Syd. Ajimoddin (Dead)
by L.Rs
 - 1-a] Syd. Saidoddin Hafizddin,
aged about 26 years, Occ. Trader,
 - 1-b] Aminoddin Syd. Hafizoddin (Dead)
by Lrs.
 - 1-b](i) Smt. Shamim Begum Syd. Aminoddin
aged 51 years, Occ. Household,
 - 1-b](ii) Mrs. Parveen BEgum Fayazkha,
aged 35 years, Occ. Household,
C/o. Fayazkha Saeedkha, R/o. Aurangabad
Katkat Gate, Neharu Nagar, Aurangabad
Tq. and Dist Aurangabad.
 - 1-b](iii) Miss. Tahseen Syd. Aminoddin,
aged 33 years, Occ. Education
 - 1-b](iv) Miss. Nasreen Syd. Aminoddin
aged 30 years, Occ. Education

- 1-b](v) Miss. Rehma Syd. Aminoddin,
aged 28 years, Occ. Education,

Nos. [1-b](i), (iii) to (v) R/o. Aurangabad
S.T.Colony, Plot No. 2, Katkat Gate,
Aurangabad, Tq. and Dist. Aurangabad.
- 1-c] Rifigoddin Hafizoddin,
aged 36 years,

Nos. [1-a] and [1-c] R/o. Near
Vidyapeth Gate, Back Side of Masjeed,
Jaisingpura, Aurangabad.
- 1-d] Halimabegum Hafizoddin
(deleted having been dead. L.Rs are
already on record)
2. Syd. Gayasoddin Ajimoddin
(Dead without leaving any heir)
3. Syd. Faiyazoddin Ajimoddin (Dead)
By L.Rs.
- 3-a] Gousiya Begum Khutbuddin
aged Major, Occ. Household
- 3-b] Asiya Begum Sk. Bashir
aged Major, Occ. Household
- 3-c] Sirajoddin Fayazoddin,
aged Major, Occ. Business
- 3-d] Shamshoddin Fayazoddin,
aged Major, Occ. Business
- 3-e] Syed Kalimoddin Fayazoddin,
aged Major, Occ. Business

- 3-f] Safiya Begum Raziyoaddin,
aged Major, Occ. Household
- 3-g] Surayya Begum Dagamiya,
aged Major, Occ. Household
- 3-h] Atiya Begum Nazir Khan,
aged Major, Occ. Household
- 3-i] Syed Sartaj Syed Fayazoddin,
aged Major, Occ. Business
- 3-j] Naimoddin Fayazoddin,
aged Major, Occ. Business
- 3-k] Rajiya Begum Azharoddin,
aged Major, Occ. Household
- 3-l] Rukhayya Begum,
aged Major, Occ. Household

Nos. [3-a] to [3-g] and [3-j] to [3-l]
R/o. Aurangabad, Tq. and Dist. Aurangabad.

Nos. [3-h] and [3-i] R/o. Tq. Dist. Beed.

- 4. Syd. Latifoddin Syd. Ajimoddin (Dead)
By L.Rs.
- 4-a] Saida Begam Syed Latifoddin,
aged 68 years,
- 4-b] Tahera Begam Syed Alimoddin,
aged about 43 years,
- 4-c] Syed. Yusufoddin Syed Latifoddin,
aged about 41 years,
- 4-d] Saleha Begam Sk. Wahid.
aged about 33 years,

- 4-e] Syed Altafoddin Syed Latifoddin,
aged about 39 years,
- 4-f] Syed Muziboddin Syed Latifoddin,
aged about 37 years,
- 4-g] Shakera Begam Abdullah,
aged about 31 years.
- 4-h] Syed Anisoddin Syed Latifoddin,
aged about 35 years.

Nos. [4-a] to [4-h] R/o. Jaisingpura,
Aurangabad, Dist. Aurangabad

- 5. Syd. Mohammad Syd. Ajimoddin,
aged about 43 years, Occ. Service,
Police Head Constabgle, R/o. Old City
Aurangabad, District Aurangabad
- 6. Janardhan Pandurang Appa,
Aged about 46 years, Occ. Business,
R/o. Gadi Parisar, Deulgaonraja,
District Buldana.

Shri K.PSadavarte, Advocate for petitioners.
None for respondents

CORAM : AVINASH G. GHAROTE, J.
DATE : 11/02/2021.

1] Heard Shri K.PSadavarte, learned counsel for the
petitioners. None for respondents.

2] Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the petitioners.

3] The petition challenges the order dated 13.2.2018 passed by the Civil Judge, Junior Division, Deulgaonraja in Regular Civil Suit No. 9 of 17, whereby an application under Order I Rule 10(2) of Civil Procedure Code, has been allowed, subject to proof of identification of proposed parties of legal heirs of deceased Isaguoddin.

4] Mr. Sadavarte, learned counsel for the petitioners submits that the said Isaguoddin did not have any legal heir which is reflected from the amended copy of the plaint and specifically the statement in page 7 thereof. He further invites my attention to the evidence in the said suit of PW-1 at Exh.C-1, wherein in the examination-in-chief he has stated that Isaguoddin did not have any issue. He, therefore, submits that the impugned order which presumes the parties to be added as the legal heirs of Isaguoddin is factually incorrect.

5] None appears for respondents.

6] The impugned order allowing the application under Order I Rule 10(2) of C.P.C is made subject to proof of identification of proposed parties as legal heirs of deceased Isaguoddin. That would indicate that the claim of the proposed parties as being legal heirs of Isaguoddin has not been accepted by the Court. Even otherwise the claim by the proposed parties of being the legal heirs of deceased Isaguoddin will have to be determined by the trial Court in accordance with the mandate of Order 22 Rule 5 of C.P.C and it is upon the decision under the said provision, that they can claim the status of being the legal heirs of late Isaguoddin.

7] The Hon Apex Court in *Jaladi Suguna (dead) thr L.Rs vrs. Satya Sai Central Trust and ors* reported in **AIR 2008 SC 2866** has held as under;

"10. Filing an application to bring the legal representagtives on record, does not amloun to bringing the legal representatives on record. When an LR application is filed, the Court should consider it and decide whether the persons named therein as the legal representatives, should be brought on record to represent the estate of the deceased. Until such decision by the Court, the persons claiming to be the legal representatives have no right to represent the estate of the deceased, nor prosecute or defend the case. If there is a dispute as to who is the legal representatives, a decision should be rendered on such dispute. Only

when the question of legal representatives is determined by the Court and such legal representative is brought on record, it can be said that the estate of the deceased is represented. The determination as to who is the legal representative under Order 22 Rule 5 will of course be for the limited purpose of representation of the estate of the deceased., for adjudication of that case. Such determination for such limited purpose will not confer on the person held to be the legal representative, any right to the property which is the subject matter of the suit, vis-a-vis other rival claimants to the estate of the deceased.

11. The provisions of Rules 4 and 5 of Order 22 are mandatory. When a respondent in an appeal dies, the Court cannot simply say that it will hear all rival claimants to the estate of the deceased respondent and proceed to dispose of the appeal. Nor can it implead all persons claiming to be legal representatives, as parties to the appeal without deciding who will represent the estate of the deceased, and proceed to hear the appeal on merits. The Court cannot also postpone the decision as to who is the legal representative of the deceased respondent, for being decided along with the appeal on merits. The Code clearly provides that where a question arises as to whether any person is or is not the legal representative of a deceased respondent, such question shall be determined by the Court. The Code also provides that where one of the respondents dies and the right to sue does not survive against the surviving respondents, the Court shall, on an application made in that behalf, cause the legal representatives of the deceased respondent to be made parties, and then proceed with the case. Though Rule 5 does not specifically provide that determination of legal representative should precede the hearing of the appeal on merits, Rule 4 read with Rule 11 make it clear that the appeal can be heard only after the legal representatives are brought on record."

8] In view of the above dictum in Jaladi Suguna (supra), the impugned order cannot be sustained. The same is hereby quashed and set aside and the learned trial court is directed to first decide as to whether the proposed applicants are the legal heirs of deceased Isaguoddin in the light of what has been stated by the Apex Court in Jaladi Suguna's case. Rule accordingly. No costs.

JUDGE