

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.4137 OF 2022
WITH
CIVIL APPLICATION NO.14405 OF 2022
IN
WRIT PETITION NO.4137 OF 2022**

**MEHAMUDA HASAN BIN KARDUSS
VERSUS
YAHYA ABDULLA MAKRANI AND OTHERS**

...

Mr. Avinash A. Khande, Advocate for the Petitioner.
Mr. N. L. Jadhav, Advocate for Respondent Nos.1 to 4.
Mr. H. V. Tungar, Advocate for Respondent No.5.

...

**AND
WRIT PETITION NO.5258 OF 2022**

**YAHYA ABDULLA MAKRANI AND OTHERS
VERSUS
MEHAMUDA HASAN BIN KARDUSS**

...

Mr. N. L. Jadhav, Advocate for the Petitioners.
Mr. Avinash A. Khande, Advocate for Respondent.

...

**CORAM : SANDEEP V. MARNE, J.
DATED : 29th NOVEMBER, 2022.**

PER COURT:-

1. In both these petitions judgment and order dated 12.08.2020 passed by the District Judge-5, Beed is under challenge. The petitioner in Writ Petition No.4137/2002 is plaintiff in Special Civil Suit No.73/2018, whereas petitioners in Writ Petition No.5258/2022 are defendants. The suit is filed for partition by one of the daughter of late Abdulla.

2. The Trial Court by its order dated 20.06.2019 enjoined original defendant nos.1 to 7 and 10 from creating third party rights in the suit properties. The original defendant nos.1 to 7 and 10 filed appeal before District Judge challenging the

order dated 20.06.2019 passed by the Trial Court. The District Judge has partly allowed the appeal and directed the parties to maintain status quo in respect of the suit properties.

3. Both plaintiff as well as defendant nos.1 to 7 and 10 are aggrieved by the order passed by the District Judge. The original defendant nos.1 to 7 and 10 do not desire any fetter on the suit properties in their possession, whereas original plaintiff is dissatisfied with the order of the status quo and desires the original order of the Trial Court injuncting defendants from creating third party rights to be restored.

4. On perusal of the orders passed by the Trial Court as well as by the lower Appellate Court, it is apparent that, the provisions of the relevant Muslim Law are not taken into consideration by both the Courts. It is the contention of original defendant nos.1 to 7 and 10 that under the Muslim Law, the property would come to the share of legal heirs only after death of original owner and during the lifetime of original owner, he enjoys complete discretion in distributing any property to legal heirs of his chose. It is the contention of original defendant nos.1 to 7 and 10 that late Abdulla had partitioned/mutated various portions of suit lands during his lifetime and the original plaintiff cannot seek further partition of those lands. They would submit that the only relief which the plaintiff could possibly seek in the suit is in respect of property which remained in the name of late Abdullah at the time of his death. They would submit that Rules of Muslim Law operate entirely in a different manner than Hindu Law. This aspect has not been taken into consideration by both the Courts below.

5. Considering the above position, I deem it appropriate to set aside the order passed by the District Judge and to remand both the Appeals for reconsideration, so that the relevant provisions of Muslim Law are taken into consideration while deciding appeals filed by both the parties. I accordingly proceed to pass the following order:

ORDER

- a. The order dated 12.08.2020 passed by the District Judge-5, Beed in Miscellaneous Civil Appeal No.27/2019 is set aside and the appeal is restored on the file of District Judge-5, Beed.
- b. The District Judge-5, Beed shall decide the Miscellaneous Civil Appeal No.27/2019 afresh after considering the provisions of Muslim Law. An endeavour shall be made to decide the Appeal as early as possible and preferably within a period of four months from today.
- c. The District Judge-5, Beed shall not be influenced by any of the observation made in the present order and shall decide the Appeal on its own merits.
- d. With the above directions, writ petitions are disposed of. Pending Civil Application is also disposed of.

(SANDEEP V. MARNE)
JUDGE