

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**28 WRIT PETITION NO.1677 OF 2023**

SHAIKH HAMID SHAIKH BIBAN AND OTHERS  
VERSUS  
SHAIKH MEER SHAIKH NASIB DECEASED THROUGH LRS  
BIBIBEGAM SHIAKH MIR AND OTHERS

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Mr. Arvind S. Deshmukh, Advocate for the Petitioners.  
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**CORAM : SHARMILA U. DESHMUKH, J.**  
**DATED : FEBRUARY 15, 2023.**

**PER COURT :**

1. Heard.
2. By this petition, the challenge is to the order dated 01.12.2022 passed by the trial Court in RCS No.78 of 2016, whereby the application of the respondent Nos.1 to 2/4 herein came to be allowed, under Order 1 Rule 10 of the Code of Civil Procedure and the petitioner was directed to implead the respondent no.1 to 2/4 as party to the proceedings.
3. The suit property in question is the ancestral property of two branches of the family Daulat Khan and Lal Khan, who claimed through their ancestor Rahim Khan. It is the case of the petitioner-plaintiff branch of Lal Khan and after his death, his wife being a *pardanashin* lady could not have been cultivated the suit

property and as such the suit property was being cultivated by her brother-in-law Daulat Khan. The petitioners are legal heirs claiming through branch of Lal Khan and the third party-applicants are the legal heirs of Daulat Khan.

4. Heard the learned counsel appearing for the petitioners.

5. RCS No.444 of 2012 seeks declaration of ownership and recovery of possession of land bearing survey No.160/A-A, admeasuring 30 Acres 11 Gunthas. It is the case of the petitioners that this property was ancestral property and the predecessors was one Rahim Khan Pathan. The facts of the case as stated in the plaint is that the plaintiff nos.1 to 3 therein are the sons of Rabanbi and plaintiff Nos.4 to 8 are the heirs of Jubidabee and plaintiff Nos.9, 10 and 11 are the heirs of Kabirabee. Raheman bi, Zubedabi and Kabirabi are the daughters of the Rabanbi and as such, are claiming through the branch of Lal Khan.

6. In the application filed by the third party-applicants, the third party applicants have stated that after the death of Daulat Khan, the suit property has been mutated in their names by virtue of mutation entry No.273 dated 31<sup>st</sup> May, 1964, and since then the suit property is in their possession and as such, they are the owners of the suit property.

7. In an application for impleadment under Order 1 Rule 10, it is necessary to consider as to whether the third party seeking impleadment has a direct and substantial interest in the property. In the present case, *prima facie*, it appears from the mutation entry, and which has been stated in the application for impleadment that from the year 1964, the suit property is mutated in the names of the legal heirs of Daulat Khan. It is not disputed that the petitioners as well as the respondents are claiming through two branches of the family of Daulat Khan and Lal Khan through a common ancestor- Rahim Khan. As such, it cannot be said that the third-party applicants will not be bound by the outcome of the proceedings and do not have direct or substantial rights or interest in the suit property. The suit is not simpliciter for injunction but also claims a relief of declaration of ownership and as such, outcome of the proceeding is bound to affect the rights, if any of a third-party applicants.

8. In the light of above, I do not find any infirmity in the order dated 01.12.2022. As a result, writ petition is devoid of merits and stands dismissed.

( SHARMILA U. DESHMUKH, J. )