



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

9 WRIT PETITION NO. 2176 OF 2024

MUJAMIL YUNUS SHAIKH AND OTHERS
VERSUS
PRAKASH WAMAN PADALKAR AND OTHERS

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Advocate for the Petitioners : Mr. C. V. Bodkhe h/f Mr. Gore
Ravindra Vitthal.
AGP for Respondents-State : Mrs. M. L. Sangit.
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CORAM : S. G. MEHARE, J.
DATE : 26.02.2024

PER COURT :-

1. Heard the learned counsel for the petitioners.
2. Issue notice to the respondents.
3. Learned AGP waives service of notice for respondent Nos.4 and 5 / State Authorities.
4. A small issue has been involved whether the petitioners would be joined as a party to the proceeding before the Revenue Authorities under the Hyderabad Tenancy and Agricultural Lands Act, 1950.
5. Respondent No.3 Shaikh Javed had filed a proceeding before the Tenancy Court claiming that he is the legal heir of

tenant Shaikh Kamroddin Shaikh Kalu @ Shaikh Amin. On the said application, the Tahsildar has decided on the issue. The respondents therein, who are respondents Nos.1 and 2 had preferred the appeal before the Additional Collector, Sambhajinagar. In that proceeding, the present petitioners filed an application to add them as the legal heirs of Shaikh Kamroddin Shaikh Kalu @ Shaikh Amin. The Additional Collector did not accept the contention and rejected the application.

6. Learned counsel for the petitioners submits that Shaikh Javed suppressed the facts from the Court that the petitioners are also the legal heirs of Shaikh Kamroddin and initiated the proceeding only in his name. He wanted to grab the entire property. However, the petitioners have an interest and share in the said property. Therefore, they were the necessary parties.

7. Learned AGP would submit that Shaikh Javed did not accept the petitioners as the legal heirs of Shaikh Kamroddin. The dispute of heirship is pending before the Civil Court. One of the legal heirs, Shaikh Javed, is already representing the dispute and property. Unless the dispute of legal heirs is decided, it would be inappropriate to add the petitioners as

party. Therefore, the impugned order is legally correct and proper.

8. The dispute is about the heirship of Shaikh Kamroddin Shaikh Kalu. Shaikh Javed claimed to be the sole legal heir of Shaikh Kamroddin. The petitioners have claimed that they are also the legal heirs of Shaikh Kamroddin. The dispute of legal heirship is pending before the Civil Court. Shaikh Javed is contesting that proceeding. It is yet to be decided whether the petitioners are the legal heirs. The doctrine of the necessary party is that without such a party, no suit or dispute could be decided. In the case at hand, one person, Mr. Shaikh Javed, claiming to be the legal heir of Shaikh Kamroddin, has claimed the tenancy right. Similar would be the claim of the present petitioners. It is the dispute between the two parties about the heirship of the deceased Shaikh Kamroddin. At this juncture, it may be stated that one of the legal heirs of Shaikh Kamroddin is representing the dispute. Whatever right he would get may create interest for all the legal heirs subject to proof that the petitioners are the legal heirs of Shaikh Kamroddin. It is not the case that in the absence of petitioners, the issue of tenancy could not be decided. Therefore, they are not necessary parties. They have to prove first that they are legal heirs. Whatever the

rights they have accrued, there are legal remedies against Shaikh Javed. In any case, the interest of the petitioners and Shaikh Javed against the landlord would be the same. Therefore, also the rights of the petitioners would not be affected.

9. For the above reasons, this Court did not find any substance in the writ petition. Hence, it is dismissed at the admission stage.

(S. G. MEHARE, J.)

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vmk/-