



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 91 OF 2024

1. Rafatalikhan S/o. Safdaralikhan,
2. Siyadatalikhan Safdaralikhan,
3. Iftekharalikhan Safdaralikhan,
4. Jafaralikhan Safdaralikhan,
5. Nasrin Begum W/o. Shermanhamadkhan,
6. Parvin Begum Abrar Shaikh,
7. Shahin Begum Naderkhan

... APPLICANTS

(Defendant Nos.2 to 5, 8, 9, 11)

VERSUS

1. Sultana Begum W/o. Shaikh Salim,
2. Himayat Ali Khan Safdarali Khan,
3. Sadat Ali Khan Safdarali Khan,
4. Farjana Begum Jafarullakhan,
5. Safdarali Khan Munwaralikhan
(*died*),
6. Tahera Begum W/o. Safdaralikhan
(*died*)

... RESPONDENTS

(Resp. No.1 – Ori. Plaintiff & Resp. Nos. 2 to
6 – Ori. Defendant Nos.6, 7, 10, 1 & 12)

...
Mr. L.H. Kawale h/f. Mr. Kamlakar J. Suryawanshi – Advocate for
Applicants

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 1st August, 2024

ORDER :

1. Heard learned Counsel for the applicants.
2. The defendants in the Regular Civil Suit No. 141 of 2015 have taken an objection to the order below Exhibit-64 in the aforesaid suit filed by them for rejection of plaint under Order VII Rule 11 of the Civil Procedure Code, passed by the learned 7th Joint Civil Judge Junior Division, Beed (*hereinafter referred to as, "the learned Trial Court"*).
3. Learned Counsel for the applicants argued on admission and thereby contended that, the learned Trial Court has definitely erred in dismissing the application (Exhibit-64) despite it was brought on record that, defendant No.1 i.e. father of present respondent No.1/plaintiff was already alive at the time of filing of this suit and therefore, the suit for partition and separate possession of the suit property was not maintainable for want of cause of action. According to him, when the parties are Sunni Muslim and governed by Shariah Law nobody can claimed partition in the lifetime of his or her father. According to him, since father of plaintiff being the defendant No.1 was alive at the time of

filing the present suit, there was no such cause of action.

4. However, on going through the impugned order and documents on record it appears that, though defendant No.1 – father of plaintiff was alive at the time of filing of suit and died subsequently on 17.07.2018, the cause of action which was not there is now available for the plaintiff for seeking a partition. Further, the Madras High Court in the case of **Thagavel (died) and Others Vs. Chidambaram and Another** in S.A. No. 589 of 2009 decided on 02.11.2012 has clearly observed that *“in suit of partition, the Court can take into account the subsequent changes during pendency of suit and mould the relief accordingly”*. In view of the said observation, the suit is now maintainable and can be taken to its logical end on merit.

5. Even otherwise also this is not the suit for only partition and separate possession but the plaintiff has also claimed declaration in respect of registered partition deed executed by defendant No.1 in the name of defendant Nos.2 to 5 behind her back. It is settled that, partial rejection is not contemplated under Order VII Rule 11 of the Civil Procedure Code. Therefore, on this count also the application (Exhibit-64) for rejection of plaint was not

maintainable. Thus, it appears that the learned Trial Court considering all these facts in proper perspective has rightly rejected the application (Exhibit-64). Accordingly no interference is required in the impugned order and therefore, the present application stands dismissed at admission stage.

6. The Civil Revision Application is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE