



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

5 WRIT PETITION NO. 8011 OF 2024

MAHEMUDA HASAN BIN KARDUS

VERSUS

YAHYA ABDULLA MAKRANI AND OTHERS

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Advocate for the Petitioner : Smt. Ansari Asfia Nuzhat
Advocate for Respondents No.1 to 5 : Shri N. L. Jadhav

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CORAM : ARUN R. PEDNEKER, J.

DATE : 18th SEPTEMBER, 2024

PER COURT:

1. Heard with consent finally.
2. The petitioner is aggrieved by the order dated 28.03.2024 passed by the District Judge, Beed in an appeal under Order 43 of the CPC against the order passed by the trial court granting injunction in favour of the plaintiff restraining the defendants No.1 to 7 and 10 from creating third party interest in the suit property.
3. The facts leading to the filing of the petition are that the plaintiff is the daughter of the late Abdulla Bin Sayeed Makrani (*Makrani*), who was the owner of the suit property and the defendants are the brothers and sisters of late Makrani. The late Makrani was having 7 sons i.e. defendants no. 1 to 7 and 3 daughters i.e. plaintiff, defendants

no.8 and 9, defendant No.10 is the wife of late Makrani. Mr. Makrani died on 01.01.1994. From the record, prima facie, it appears that the deceased in his lifetime had distributed his properties between the sons and had kept one share with himself. It also appears from the record produced that late Makrani had given certain amounts to the daughters i.e. 1,40,000/- and the daughters have relinquished their share in the property of the late Makrani in his lifetime. The mutation entry had taken place in the year 1982 and remain unchallenged during the lifetime of late Makrani.

After the demise of late Makrani the plaintiff / daughter has filed the suit for partition of the suit properties owned by late Makrani and claimed that after demise of late Makrani the plaintiff and all defendants became owner, possessor of the suit properties as tenant in common and that the plaintiff has got 1/17th share in the suit property. She also prayed for injunction not to create any third party interest in the suit properties.

The trial court, on consideration of the material, granted injunction in favour of the plaintiff by holding that defendants had not produced document to show that the daughters have given up their share in the suit properties and, accordingly, clamped injunction on the defendants i.e. brothers and mother from creating third party interest in the suit properties. The said order passed by the trial court is challenged

before the appellate court in which the status quo order was passed by the appellate court, which was again challenged before this court in Writ Petition No.4137 of 2022 and 5258 of 2022 by both the parties. By order dated 29.11.2022, this court set aside the order of the District Court and remitted the matter back for consideration by holding that the District Court has not taken into consideration that under the Muslim Law the property would come to the share of the legal heirs after the death of the original owner and that during the lifetime of the original owner is entitled to distribute the properties to the legal heirs of his choice.

4. It was also contended before this court in the above writ petitions that the only relief the plaintiff would possibly seek in the suit is in respect of the property, which remained in the name of late Makrani and that the reliefs under the Muslim Law operates entirely in a different manner. This aspect has not been taken into consideration by both the courts below. Considering this position, this court in the above writ petitions set aside the order of the District Court and remitted the matter back for reconsideration.

5. When the matter was remitted back to the appellate court, the defendants moved application for amendment of the written statement, which is allowed by the appellate court and that the amendment in written statement was carried out, so also, the documents

were placed on record, wherein the relinquishment deed by the sisters including the plaintiff was also placed on record. After remand, considering the material, the appellate court by the impugned order dated 28.03.2024, prima facie, held that the late Makrani has distributed the suit property amongst the sons and has given certain amount of money to the daughters and that they have relinquished the suit properties and has allowed the appeal and set aside the order granting injunction in favour of the plaintiff.

Under the Mohammedan Law there is no concept of right by birth and, as such, the late Makrani was the absolute owner of the property and that he could distribute the same during his lifetime to his sons and daughters and his wife.

6. Challenging the order passed by the appellate court dated 28.03.2024, the learned counsel for the petitioner submits that the documents, which are produced along with amended written statement are yet to be established in the trial and that she specifically contends across the bar that the plaintiff has not signed the relinquishment deed in favour of the defendants no.1 to 7 and that she has not received any consideration as mentioned in the relinquishment deed. She disputes the relinquishment deed in its entirety.

7. She also submits that until the factum of relinquishment is proved during the course of the trial, injunction should be granted as irreparable loss would be caused to the plaintiff, in the event, third party interest is created in the suit properties. She submits that the order of the trial court be restored during the pendency of the proceedings.

8. Per contra, learned counsel for the original defendants, sons of Mr. Makrani, submits that both the sisters have not filed written statement in the proceedings and have not supported the cause of the plaintiff . He also submits that during the lifetime of the father the mutation entries were carried out and that the mutation entries were not disputed by the plaintiff during the lifetime of the father and that she has not challenged the mutation entries. He submits that their late father Makrani after the relinquishment of the rights by the daughters in the suit properties applied for NA permission. Also further expenditure incurred on the suit properties by the defendants (sons of late Makrani) and, now, the suit properties are maintained by the sons of Defendants No.1 to 7. In the long passage of time, on account of price rise of the properties the plaintiff is blackmailing the defendants No.1 to 7. He submits that the document on record would clearly show that the daughters have relinquished their share in the suit properties.

9. Having considered the rival submissions, prima facie, it can be seen that the father in his life time has applied for mutation in respect of the suit properties. He has distributed the suit properties in favour of the sons during the lifetime and also applied for change in mutation entries in November 1982, which was sanctioned in December 1982 and the parties were present before the mutation officer. There is no mention of the relinquishment deed by the daughters in the mutation entry.

At the time of registration of the mutation entry in the year 1981, the plaintiff Mehmuda was not married, other two sisters were married.

10. Considering that the other two sisters were married and that they have not objected and accepted the claim of the plaintiff, prima facie, it cannot be said that there was no such document in the year 1981 relinquishing the share by the daughters in favour of the brothers and the father having not given anything to the daughters. As such, at this stage, it cannot be said after long passage of time, that the sisters have not relinquished their share in the suit properties. In any event, under the Muslim Law, the father late Makrani was the absolute owner of the suit properties and was fully within his right to distribute the suit properties irrespective of the fact whether the defendants have relinquished their share. The relinquishment would be of no consequence as the father

himself was competent to distribute his properties in his lifetime. To this extent the order of the appellate court cannot be faulted with.

11. Further, there is also one more aspect, which needs to be considered as the submission made before this court, which is recorded by the order dated 29.11.2022, at para 4, in Writ Petition No.4137 of 2022 and 5258 of 2022, wherein defendants no.1 to 7 had made a submission that the only relief the plaintiff could possibly seek in the suit for properties which remained in the name of the late Makrani at the time of his death.

While distributing the suit properties to his sons late Makrani had kept some portion of the suit properties to himself. Before his demise, he further gifted / transferred some properties left with him to his wife (defendant no.10).

At this moment, it is not possible for me based on the document of relinquishment, to hold whether the sisters have entirely given up their share in the suit properties left with the late Makrani after the distribution of the suit properties to his sons. To the extent of the share of the late Makrani there would possibly an order of injunction. Thus, this court would grant order of injunction only to the extent of the property left in the hands of late Makrani after transfer of the part of suit properties to sons (Defendants No.1 to 7) and wife (Defendant No.10).

12. As such, the order of the appellate court is partly maintained. Injunction is granted against defendants no.1 to 7 from creating third party interest in the part of the suit properties left with late Makrani after distribution of the share to the sons (Defendants No.1 to 7) and to his wife (Defendants No.10) as is reflected from the mutation entries made in the year 1982 and 1993.

13. All observations made in this proceedings are prima facie for the purpose of deciding the interim application and the trial court will not be influenced by this observations while deciding the suit finally.

14. The writ petition accordingly stands disposed of.

[ARUN R. PEDNEKER, J.]

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