

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.588 OF 2020
WITH
INTERIM APPLICATION NO.942 OF 2023
IN
SECOND APPEAL NO.588 OF 2020
WITH
INTERIM APPLICATION NO.21 OF 2021
IN
SECOND APPEAL NO.588 OF 2020**

Ashamma Jalaluddin Ghorl

....Appellant/Applicant

V/S

Hajrat Ladleshaha Peer Saheb

Dargah & Ors.

....Respondents

Mr. Drupad S. Patil a/w Mr. Dheeraj D. Patil *for the Appellant/Applicant.*

Mr. T.S. Ingale *for Respondent Nos.1 to 13.*

Mr. Umesh Pawar *for the Respondent Nos.14/1, 14/2, 14/4, 14/6 and 14/7.*

Ms. Ashamma Jalaluddin Ghorl - Applicant/Appellant - in person present in Court.

CORAM: SANDEEP V. MARNE, J.

DATE : 20 MARCH 2024.

P.C.:

1 By present Appeal, Appellant is challenging decree dated 17 September 2019 passed by District Judge, Sangli in Regular Civil Appeal No.15 of 2010. The First Appellate Court has dismissed the Appeal preferred by the Appellant and has confirmed the decree dated 25 November 2009 passed by

the 2nd Joint Civil Judge Junior Division, Sangli in Regular Civil Suit No.178 of 2008.

2 Plaintiffs had instituted Regular Civil Suit No.178 of 2008 seeking a declaration that decree passed in Regular Civil Suit No.164 of 1999 on 25 November 2003 is not binding on Plaintiffs in respect of the suit property and seeking injunction against Defendants from executing the said decree. The decree in Regular Civil Suit No.164 of 1999 was passed in a partition suit filed between the Appellant and her brother in which partition was directed to be effected in respect of properties including the suit property between the Appellant and her brother. The Plaintiffs-Trust filed Regular Civil Suit No.178 of 2008 seeking a declaration that the decree of partition between Appellant and her brother is not binding on the Trust as the suit property is owned by the Trust. Plaintiffs-Trust also raised a plea in its suit that a female cannot be permitted to act in capacity as a Mujawar/Occupier for rendering services to Dargah and only male members of a family are entitled to do so. The Trial Court proceeded to hold that the suit property is the Trust property and that therefore the decree passed in the partition suit between Appellant and her brother was not binding on the Trust. The Trial Court however negated the plea raised by the Plaintiffs-Trust about incapacity of female member to render services to Dargah as Mujawar/Occupier. The First Appellate Court has confirmed the decree passed by the Trial Court.

3 I have heard Mr. Patil, the learned counsel appearing for the Appellant and Mr. Ingale, the learned counsel appearing for the Respondents/Original Plaintiffs.

4 After arguing the Appeal extensively Mr. Patil, after taking instructions from his client, would submit that the Appellant does not desire to question the title of Trust to the suit property. He would however submit that Appellant's right to act as Mujawar/Occupier in respect of the suit property cannot be questioned. He would submit that Appellant's right to act as Mujawar/Occupier is questioned by the Trust only on account of the fact that she is not a male member. Mr. Ingale after taking instructions from his clients would fairly submit that the Plaintiffs-Trust does not have any objection for the Appellant to continue to act as Mujawar/Occupier in respect of the suit property by admitting the title of the Trust to the suit property. Mr. Ingale would submit that the name of the Appellant in fact continues to be reflected on the 7/12 extract. Mr. Patil is quick enough to respond that reflection of the name of the Appellant on the 7/12 extract is in 'other rights' column. Mr. Ingale would submit that it is for the Appellant to move necessary proceedings for mutation of her name in occupier's column in the 7/12 extract.

5 Thus there appears to be agreement between the parties. Appellant is not disputing the fact that the suit property is Trust property and that the Trust is the owner thereof. The Trust on the other hand is willing to accept

right of the Appellant to continue as Mujawar/Occupier in respect of the suit property by admitting the title of the Plaintiffs-Trust. In that view of the matter, though no interference is warranted in the impugned decrees passed by the Trial and the First Appellate Court. It is clarified that the Appellant shall continue to be in occupation of the suit property in her capacity as Mujawar/Occupier by admitting title of the Plaintiffs-Trust in respect of the suit property. If and when the Plaintiffs-Trust desires to evict any Mujawar/Occupier in respect of Trust properties, including the Appellant, the Trust would be entitled to adopt necessary proceedings in that regard. All questions and rights of parties in that regard are kept open. With the above observations, the Second Appeal is disposed of.

6 Needless to say that all the restrictions applicable to a Mujawar/Occupier for occupation of the Trust property, including restriction on transfer/alienation/parting with possession, shall continue to apply against the Appellant and Respondent No.14.

7 With disposal of the Second Appeal, Interim Applications taken out by the Applicants do not survive and the same stands accordingly disposed of.

(SANDEEP V. MARNE, J.)

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by SUDARSHAN
RAJALINGAM
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Date:
2024.03.22
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