

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.434 OF 2024

Hasan Ahamad Mujawar (Decd.) through legal
heirs Kureshabi Hasan Mujawar and Ors. .. Petitioners

Versus

Banubai Husen Mujawar and Ors. .. Respondents

WITH

WRIT PETITION NO.435 OF 2024

Hasan Ahamad Mujawar (Decd.) through legal
heirs Kureshabi Hasan Mujawar and Ors. .. Petitioners

Versus

Banubai Husen Mujawar and Ors. .. Respondents

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- Mr. Chetan Patil a/w. B. R. Mandlik and Ms. Rati, Sinhasane,
Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 16, 2024

P.C.:

- 1.** Heard Mr. Patil, learned Advocate for Petitioners.
- 2.** At the outset, Mr. Patil seeks leave to amend and include certain interim prayer clauses in the Writ Petition. Considering that the Writ Petition is filed by Plaintiff to challenge two separate orders passed by the learned Appellate Court in Miscellaneous Civil Appeal Nos.156 of 2022, the draft amendment is allowed by the Court. The draft amendment is tendered in Court which is taken on record and marked 'X' for identification. Amendment is directed to be carried out forthwith in Court's copy. Re-verification stands dispensed with. Copy

of amended cause title be served on the Respondents.

3. This Writ Petition takes exception to order dated 09.08.2023 passed in Miscellaneous Civil Appeal No.156 of 2022 and Miscellaneous Civil Appeal No.157 of 2022 dismissing the said Miscellaneous Civil Appeals. Petitioners are Defendants before the Appellate Court who filed two separate Miscellaneous Civil Appeals namely Miscellaneous Civil Appeal No.156 of 2022 and Miscellaneous Civil Appeal No.157 of 2022. Trial Court had allowed the Application filed below Exhibit-59 in Regular Civil Suit No.273 of 2016 which was regarding injunction and simultaneously dismissed Application filed below Exhibit-77 filed by the Defendants.

4. Against these two dismissal orders Defendants being aggrieved filed the two Miscellaneous Civil Appeals which were rejected by the Appellate Court.

5. Mr. Patil has drawn my attention to the impugned judgment dated 09.08.2023 and reasons contained in paragraph No.7 thereof and would contend that the finding returned by the learned Appellate Court that Appellants / Defendants did not produce any documents in the proceedings to show that they are also legal heirs of Jainuddin is a wrong finding.

6. In order to prove that the said finding is incorrect Mr. Patil has drawn my attention to the family tree at page No.61 of the Writ

Petition. In the family tree it is seen that Jainuddin, Hussein and Qutubddin are brothers, apart from other siblings. The suit plaint is filed by the branch of Jainuddin i.e. legal heirs of Jainuddin who have in paragraph No.1 of the suit plaint stated that the suit property belongs to the entitlement and ownership of Jainuddin as his self acquired property.

7. Mr. Patil has further taken me through the suit plaint and has drawn my attention to the Affidavit filed by Hussein who is one son of Jainuddin as can be seen from the genealogy. This Affidavit is appended at page No.101 of the Writ Petition. In that Affidavit Mr. Hussein, son of Jainuddin has deposed on oath that in so far as the suit property bearing Gat Nos.28/1 and 28/3 is concerned, there are 11 legal heirs entitled to the said suit property.

8. This dichotomy ought to have been noticed by the learned Appellate Court or the learned Trial Court but I find that both the orders are bereft of this *prima facie* issue which has been pointed out by Mr. Patil.

9. Hence on the basis of above, an arguable case has been made out by Mr. Patil for issuance of notice and grant of ad-interim relief at this stage.

10. Mr. Patil has made one more grievance before the Court. He has placed on record a registered Agreement for sale which is

executed by the legal heirs of Jainuddin and Hussein who are now both deceased. This transaction is dated 06.05.2023 and is in respect of 182.52 sq. meters out of the suit property bearing Gat No.28/1.

11. Considering the substantive challenge and the Plaintiffs own case for seeking entitlement to the suit property being pending and various proceedings between the parties, it would be improper for the Plaintiffs to sell the suit property, alienate the same and create third party rights.

12. Hence, issue notice to Respondents. Petitioners are directed to serve the Respondents. Humdast permitted. In addition to Court's notice, Petitioners are permitted to serve the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Respondents are directed to file Affidavit-in-Reply to the Writ Petitions.

13. In view of the above Plaintiffs are restrained by an order of this Court to not alienate and create third party rights in any of the suit properties which are subject matter of the pending suit before the trial Court until the present Petition is heard for admission.

14. Stand over to **13th February, 2024.**

H. H. SAWANT

[MILIND N. JADHAV, J.]

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