



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**929 CIVIL APPLICATION NO. 1194 OF 2025
IN SA/427/2002**

WAHEEDABI SYED L.RS. SYED ALI SYED LAL AND ORS.
VERSUS
NASER KHAN ALIAS NASEKHAN JAFAR KHAN AND OTHERS

...
Advocate for Applicants : Mrs. A.N. Ansari
Advocate for Respondent Nos.1 to 4, 5a to 5e, 6 to 10 : Mr.S.V. Natu

**WITH
CIVIL APPLICATION NO. 2528 OF 2024
IN CA/15096/2013**

AFROX KHAN AREF KHAN PATHAN
VERSUS
SYED ALI ABBAS ALI LRS MUMTAZ ALI LRS SHAHANAZ
BEGUM AND OTHERS

...
Advocate for Applicant : Mr. Pathan Hamzakhan I.
**WITH
CIVIL APPLICATION NO. 2529 OF 2024
IN SA/427/2002**

AFROZ KHAN AREF KHAN PATHAN
VERSUS
SYED ALI S/O ABBAS ALI L.RS. MUMTAZ ALI L.RS. SHAHANAZ
BEGUM AND ORS

...
Advocate for Applicant : Mr. Pathan Hamzakhan I.

**WITH
SECOND APPEAL NO. 427 OF 2002**

KALAWATI SHAH @ GUBEDABEGUM W/O JAFFARKHAN AND
ORS
VERSUS
SYED ALI S/O ABBAS ALI AND ORS

...
Advocate for Appellant : Mr. Adv. S. V. Natu
Advocate for Respondent Nos. 18a to 18k and 38f : Mrs. Ansari A.N.

....
CORAM : ROHIT W. JOSHI, J.

Dated : 5th MARCH, 2025

PER COURT :-

1. Civil Application No. 8591/2016 was filed in the matter contending that the parties have settled the dispute mutually. However, some parties had raised objection stating that matter is not compromised. In view of the aforesaid, vide order dated 03.11.2023, the parties were relegated to the learned trial Court for the purpose of ascertaining genuineness of the compromise.

2. Now the alleged legal representatives of deceased appellant no.4-Aref Khan Jafar Khan have moved Civil Application No.2529/2024 for bringing their names as legal representatives on record.

3. The appellant no.8 is opposing the application on the ground that the matter is amicably settled *inter se* between the parties and appellant no.4 has also signed the settlement terms. He contends that the settlement terms are binding on the appellant no.4 as also his legal heirs. He

further contends that a Civil Suit, being Regular Civil Suit No.540/2023 is filed by the proposed legal representatives of the appellant no.4 – Afref Khan, wherein they have prayed for partition and separate possession of several properties including the suit property. So far as the suit property is concerned, their contention in the civil suit is that the settlement terms are not binding on their father Aref Khan and also on his legal heirs.

4. The settlement terms in the present matter have been verified by the Registrar of the District Court, Nanded pursuant to the orders passed by this Court. This Court has thereafter accepted the settlement terms. A substantive civil suit disputing the settlement terms is pending. Upon demise of party to the proceeding, normally the legal heirs are to be brought on record as legal representatives. In every case the legal heirs cannot represent the estate of deceased as legal representatives. By virtue of settlement, which is now disputed, the father of the present applicants had allowed appellant no.8 to foreclose the mortgage. The inquiry under Order 22 is a limited inquiry. In view of the settlement

between the parties, I am of the opinion that the legal heirs of deceased Aref Khan cannot be impleaded in the present Second Appeal as his legal representatives.

5. Needless to mention that it will be open for the learned Civil Court to adjudicate rival claims with respect to right of appellant no.8 to foreclose mortgage. It is well settled that the orders passed in the context of Order XXII do not operate as res judicata in substantive civil suit, where rights of parties are to be adjudicated on full-dressed trial.

6. In the light of the aforesaid, the application is rejected. Subject of course to the condition that this order shall not operate as res judicata in the civil suit filed by the legal representatives of the deceased. Since the civil suit is already filed, the applicants cannot be permitted to challenge the settlement by filing the present civil application. It is obvious that the litigant has to chose only one remedy for redressal of one cause. Since the learned counsel has taken a considered decision to pursue the civil suit which is a more efficacious remedy the present application is rejected.

Civil Application No.1194/2025 :-

The appellant no.8 is granted two weeks time to file reply as a last chance.

2. Stand over to 19th March, 2025.

3. The learned 2nd Joint Civil Judge, Junior Division Nanded has issued a letter dated 23.04.2024 seeking extension of six months to conclude the inquiry as directed by this Court vide order dated 03.11.2023. It is informed that extension of time was granted once. Time for completing the inquiry is extended by six months as requested. The learned Court is requested to complete the inquiry within the extended period without seeking further extension.

(ROHIT W. JOSHI, J)

sga/2025