



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

FIRST APPEAL NO. 2416 OF 2024

Md Asad Mirza Md Ayub Mirza And Ors

....Appellant

VERSUS

The State Of Maharashtra Through The Collector Nanded And Ors.

.....Respondent

.....
Advocate for Appellant : Mr. Vivek Vasantrao Bhavthankar
AGP for Respondents: Mr. D.B. Bhange.
.....

WITH

**CIVIL APPLICATION NO. 10742 OF 2024
IN FA/2416/2024**

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 10TH MARCH, 2025.

ORDER :-

1. Heard Mr. Vivek Bhavthankar, learned Advocate appearing for appellants.
2. Appellants impugn judgment and order dated 13.06.2024 passed by Civil Judge, Senior Division, Biloli, Dist. Nanded in Civil Misc. Application No. 270 of 2021, where by rejecting prayer for grant of heirship certificate.
3. Mr. Bhavthankar, learned Advocate invites attention of this Court to observations of learned trial judge in paragraph No. 9 of the impugned order and submits that claim of the appellants for grant of heirship certificate has been rejected only on the ground that there is no document to show that Ahamad Mirza was son of Mirza Raza Baig. Death certificate of Mirza Raza Baig and Ahmed Mirza are also not filed and therefore, it is not established that Ahmed Mirza 12 ptwas grand father of applicant or Mirza Raza was great-

grand father of applicants.

4. Mr. Bhavthankar, would further submit that death certificates of Mohammad Ahmed Mirza and Raza Baig son of Abbas Baig were inadvertently not placed before trial Court. Trial Court never indicated that such document would be required. Even appellants were not advised by their Advocate to file the same on record. He submits that since appellants seek heirship certificate, their rights shall not be deprived due to technicality. Those documents are now placed in this appeal alongwith Civil Application.

5. Having considered submission advanced, it can be observed that claim of appellant for grant of legal heir certificate has been rejected only on the ground that applicant failed to place on record evidence that Mirza Raza Baig was father of applicant Ahmed Mirza. The appellants filed Civil Application No. 10472 of 2024, seeking permission to place on record death certificate of Mirza Raza Baig issued by Managing Committee for Idgah and Graveyard, Nizamabad dated 16.2.2021, which certifies that Raza Baig s/o. Abbas Baig expired on 1.1.1954 and buried at the graveyard at Nizamabad. Similarly, applicants have filed death certificate Mohammad Ahmed Mirza, issued by Registrar CMC, Raichur, dated 20.3.2007 certifying death of Mohd. Ahmed Mirza on 1.3.1970. It appears that applicants could not place on record aforesaid certificate for want of proper legal advice. Their lapse is inadvertent. Therefore, considering the nature of proceeding, there is no impediment in allowing the prayer permitting the applicants to file aforesaid documents on record by way additional evidence. In that view of the matter, following order is passed :-

ORDER

- [a] First appeal is partly allowed;
- [b] Impugned judgment and order dated 13.6.2024 passed by Civil Judge (S.D.), Biloli in Misc. Civil Application No. 270 of 2021 is hereby quashed and set aside;
- [c] Misc. Civil application NO. 270 of 2021 is restored to its

original position and shall be re-admitted/re-registered before the Civil Judge (S.D.), Biloli.

- [d] The original documents tendered alongwith C.A. NO. 1074 of 2024 are permitted to be placed on record as additional evidence and same be considered while passing fresh order after remand.
- [e] Parties to appear before the Civil Judge S.D., Biloli on 9.4.2025, who shall decide the Misc. Application No. 270 of 2021 expeditiously within a period of two months from the date of appearance of parties.
- [f] First appeal stands disposed of.
- [g] Appellant is permitted to take back the original death certificates for presentation before the Civil Judge (S.D.), Biloli. Office to retain copies of the same, to be kept on record of this appeal.
- [h] Pending civil application stands disposed of.

[S.G. CHAPALGAONKAR, J]

grt/-