

Santosh

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

WRIT PETITION NO. 10847 OF 2025

Mohammad Ismail Mohammad Swaleh ...Petitioner

Versus

Haji Nisar Ahmed Shabbir Ahmed and ors. ...Respondents

AND

WRIT PETITION NO. 10848 OF 2025

Mohammad Sharif Mohammad Ishaq (since deceased) through LR. ...Petitioners

Versus

Haji Nisar Ahmed Shabbir Ahmed and ors. ...Respondents

AND

WRIT PETITION NO. 10657 OF 2025

Mohammad Ismail Mohammad Swaleh ...Petitioner

Versus

Haji Nisar Ahmed Shabbir Ahmed and ors. ...Respondents

AND

WRIT PETITION NO. 10734 OF 2025

Abdul Aziz Ishaq ...Petitioner

Versus

Haji Nisar Ahmed Shabbir Ahmed and ors. ...Respondents

Mr. Devendra Joshi, a/w Ashish Gabhale, for the Petitioner in all WP.

Mrs. P. J. Gavhane, AGP for the State in WP/10848/2025.

CORAM: N. J. JAMADAR, J.

DATED : 6th AUGUST, 2025

Order:-

1. Heard the learned Counsel for the parties.

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2. These petitions under Article 227 of the Constitution of India arise out of identical fact-situations, as all the petitioners claim through Maulana Mohd. Ishaq and assert independent rights in the suit properties which are the subject matters of the execution petitions being (i) Regular Darkhast No.21 of 2016 instituted for the execution of the decree passed in Regular Civil Suit No.237 of 2011, by the Appellate Court in Civil Appeal No.9 of 2014, (ii) Regular Darkhast No.23 of 2016 filed for the execution of the decree passed in Regular Civil Suit No.283 of 2011, by the Appellate Court in Civil Appeal No.10 of 2014, (iii) Regular Darkhast No.24 of 2016 filed for execution of the decree in Regular Civil Suit No.520 of 2012, passed by the Appellate Court in Civil Appeal No.12 of 2014 and (iv) Regular Darkhast No.22 of 2016, filed for execution of decree in Regular Civil Suit No.371 fo 2012, passed by the Appellate Court in Civil Appeal No.11 of 2014.

3. The petitioners filed obstruction applications seeking a declaration that the above decrees were not binding on the petitioners. The Executing Court rejected the applications observing *inter alia* that the petitioners had no independent right or claim in the suit properties. The petitioners were claiming through Maulana Mohd. Ishaq, whose rights stood

determined by the orders passed by the District Court in the above numbered Civil Appeals and the High Court in Civil Revision Applications.

4. By the impugned orders the learned District Judge dismissed the appeals concurring with the view of the Trial Court.

5. Mr. Joshi, the learned Counsel for the petitioners, submitted that the courts were in error in dismissing the obstruction applications by failing to consider the nature of the respective petitioners claim in a correct perspective. Attention of the Court was invited to copy of the Sale Deed dated 22nd January, 1949, under which Maulana Mohd. Ishaq Mohd. Yusuf had purchased the property bearing Survey No.1395. It was submitted that Maulana Mohd. Ishaq was not party to the suits in which the decrees came to be passed. Therefore, the courts were in error in non-suiting the petitioners on the ground that the petitioners had no independent right as the rights of Maulana Mohd. Ishaq were already determined.

6. I find it difficult to accede to the submissions of Mr. Joshi. The judgment of this Court in Civil Revision Applications No.343 of 2016, 344 of 2016, 346 of 2016 and 347 of 2016, in a sense, seals the issue sought to be raised by the petitioners.

This Court noted that on 16th February, 1977 an application was made by Maulana Mohd. Isahaq Mohd. Yusuf, through whom the petitioners claim, and his brother Mohd. Ibrahim Mohd. Yusuf, Mohd. Akhub Mohd. Yusuf and Shabbir Ahmed Mohd. Yusuf, the father of plaintiff No.1, to effect partition of the property bearing Survey No.1395. In the said application, the area allotted to each of the brothers was carved out as under:

Sr. No.	Name	Area allotted
1.	Maulana Mohd. Isahaq Mohd. Yusuf	10008 sq. ft.
2.	Mohd. Ibrahim Mohd. Yusuf	5741 sq.ft.
3.	Mohd. Akhub Mohd. Yusuf	8025 sq. ft.
4.	Shabbir Ahmed Mohd. Yusuf, father of plaintiff No.1	6888 sq. ft.

7. In that context, this Court observed in paragraph 16 as under:

“16. Perusal of Exhibits 39 and 40 as also the extract of Property Register Cards Exhibits 41 and 42 clearly establish that in the year 1977, the partition was effected amongst four brothers and an area admeasuring 6888 sq. ft. out of total one acre and ten gunthas of City Survey No.1395/7 was allotted to Shabbir Ahmed Mohd. Yusuf. Defendants No.1 and 2 have not challenged order dated 4.3.1977 passed by the City Survey Officer. That order was passed in pursuance of the application made on 16.2.1977 and after recording the statements. In view thereof, I do not find that the District Court committed any error in holding that the plaintiffs have established partition as also that an area admeasuring 6888 sq. ft. was allotted to Shabbir Ahmed Mohd. Yusuf during the partition of 1977.”

8. In the face of the aforesaid decision, which has attained finality, the myriad contentions of the petitioners in their

endeavour to delay and defeat the execution of the decrees passed in the respective suits, do not deserve any consideration as all the petitioners claim through Maulana Mohd. Ishaq. This Court has categorically held that an area admeasuring 6888 sq. ft. was allotted to Shabbir Ahmed Mohd. Yusuf, the predecessor-in-title of the plaintiff – respondent, in the partition effected in the year 1977. Thereafter Maulana Mohd. Ishaq had no subsisting right in the said property. Resultantly, the petitioners, who claim through Maulana Mohd. Ishaq, have no semblance of right in the suit properties. There is no infirmity in the impugned orders.

9. Thus the petitions do not deserve to be entertained.
10. The petitions stand dismissed.

[N. J. JAMADAR, J.]