



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4870 OF 2024

Salehabee Sk Saheban Died Through Lrs
Shaikh Shaben Shaikh Ahmed and Others ...Petitioners

Versus

Khatijabi Ahmed Bin Ali Chouse and Others ...Respondents

- Mr. Ghode Madhav C, Advocate for the Petitioners.
- Mr. Bajaj Anil S., Advocate for Respondent Nos.8, 10, 12 to 14, 17, 19 and 21 to 23.
- Mr. Shubham K. Shinde, Advocate for Respondent No.20.
- Mr. Shaikh Wajeed Ahmed, Advocate for Respondent No.24.

CORAM : AJIT B. KADETHANKAR, J.

DATE : MARCH 10, 2026

P. C. :

1. Respondent No.1 has filed Regular Civil Suit No.334 of 1994 (old), which is renumbered as Regular Civil Suit No.213 of 2024 for partition in the Court of Learned Civil Judge, Senior Division, Jalna. The petitioners are the legal representatives of deceased defendant No.2. During the suit proceedings, defendant No.2 filed the present application at Exhibit 335, thereby requesting to transpose defendant No.2 (A to F) as plaintiff under Order I Rule 10 read with Order XXIII Rule 1 (A) of the Code of Civil Procedure, 1908. The said application has been turned down by the learned Civil Judge with

reasoning.

2. Mr. Bajaj, learned counsel appearing for co-defendants produces a certified copy of Exhibit 428, which is a evidence closure pursis filed by the present petitioners on 19th September 2025. The said pursis appears to have been taken on record.

3. Mr. Ghode, learned counsel for the petitioners would submit that the application was filed under reasonable apprehension that the petitioners would be deprived of their legitimate right in view of failure of the plaintiff to adduce evidence and the subsequent compromises arrive at between some parties. In order to justify the application, Mr. Ghode, learned counsel for the petitioners would submit that the petitioners are left with no other choice than to file the application under Order I Rule 10 read with Order XXIII of the Code.

4. With the able assistance of the learned counsel for the respective parties, I have carefully gone through the order passed by the learned Civil Court on an application filed below Exhibit 335. The apprehension expressed by the learned counsel for the petitioners are well answered by the learned Trial Court while observations at paragraph Nos.10 to 12, which read as follows :

- “10. *The basic requirement for exercise of power under Order 23 Rule 1(A) would be to examine if the plaintiff is seeking to withdraw or to abandon his claim under Rule 1 of Order 23 and the defendants seeking transposition is having an interest in the subject matter of the suit and thereby a substantial question to be adjudicated against the order defendants. In such a situation the proforma defendants is to be allowed to continue with the same suit as plaintiff, thereby averting the likelihood of his right being defeated and also obviating unnecessary multiplicity of proceedings. Further, the object of Order 1 Rule 10 of CPC is essentially to bring on record all the persons who are parties to the dispute relating to the subject matter of the suit so that the dispute may be determined in their presence and multiplicity of proceedings could be avoided.*
11. *Admittedly, the original plaintiff has filed suit for partition and separate possession in respect of suit properties in the year-1994. She did not appear in the suit since long nor adduced evidence on her behalf and therefore, already defendants are permitted to adduce evidence on their behalf. The original plaintiff has not abandoned the suit nor withdrawn the same. The parties who have settled their dispute are all original defendants. They have*

not settled their dispute with the original plaintiff. The present applicants/defendant no.2(A to F) are claiming their right as legal heirs of original defendant no.2-Salehabee Shaikh Sheban. She has already submitted her written statement during her life time as defendant.

12. *Moreover, no further orders have been passed on the applications filed by remaining transposed plaintiffs and defendants in respect of their settlement. It is the partition suit. There is original plaintiff on record and present defendants are contesting the suit. Therefore, they need to be heard before passing any order on compromise petition filed by remaining parties. These defendants are already on record and contesting the suit for their share in the suit properties. Therefore, in the circumstances it would not be just and proper to allow the defendant no.2(A to F) to transpose themselves as plaintiffs. In fact, as stated earlier they may adduce evidence on their behalf so that suit will be decided on merit. Hence, application filed by defendant no.2(A to F) deserves to be rejected with following order.*

ORDER

- 1 *The application filed by defendant no.2(A to F) vide Exh.335 is hereby rejected.*
- 2 *The defendants are liberty to adduce their evidence.*
- 3 *Application accordingly disposed off.”*

5. After hearing this matter for some time, noticing disinclination to cause any interference in the impugned order, Mr. Ghode, learned counsel for the petitioners seeks leave to withdraw the petition. He further submits that to protect the interest of the petitioners they be permitted to take appropriate legal proceedings in hands whenever required.

7. Needless to mention, the petitioners are the one of the defendants in the partition suit and hence, the petitioners have every right to take up such legal proceedings as are permissible in law in the eventuality.

8. In view of the above, the writ petition is disposed of as withdrawn. Even it is clarified that the learned Trial Court shall give an opportunity of hearing to the petitioners whenever any application or settlement is produced before it.

9. No observation or noting in this order shall affect right of the petitioners to adopt any legal remedy as is permissible in law.

(AJIT B. KADETHANKAR, J.)