



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

WRIT PETITION NO. 1726 OF 2026

MAHEBOOB KHAN MUZAFFER KHAN SINCE DECEASED
THR LRS
VERSUS

AZIZ AHEMAD KHAN MUZAFFAR KHAN DIED THR LRS
ANISA BEGUM AZIZ KHAN DIED THR LRS AND ANOTHER

...
Mr. A. A. Mukhedkar, Advocate for the Petitioner.

...
CORAM : S. G. CHAPALGAONKAR, J.
DATED : 17th FEBRUARY, 2026.

FINAL ORDER:-

1. The petitioners impugn order dated 06.01.2026 passed below Exhibit-49 by Civil Judge Senior Division at Nanded in Special Darkhast No.10/2018, whereby Executing Court has appointed Court Commissioner for execution of decree of partition and separate possession in respect of house properties.

2. Mr. Mukhedkar, learned Advocate appearing for petitioners submits that decree has been passed against dead persons. The Executing Court has not decided individual rights of legal representatives, who are brought on record in execution of decree. Previously similar attempt of appointment of Court Commissioner vide order passed below Exhibit-27 has been dislodged by order of this Court in Writ Petition No.1329/2024 dated 13.03.2025. Ignoring directives given by this Court, Executing Court has again passed impugned order appointing Court Commissioner for

execution of decree. He would, therefore, urge to quash and set aside impugned order.

3. Having considered submissions advanced, it can be observed that Special Civil Suit No.50/1989 has been instituted before Civil Judge Senior Division at Nanded for relief of partition and separate possession in respect of one house property and three shops. During pendency of suit, some of plaintiffs and defendants expired. However, title clause of decree passed in 2005 shows that legal representatives of respective parties were brought on record. It appears that, after passing decree again some of parties were dead and, therefore, while filing execution of decree, legal representatives of deceased parties are brought on record.

4. On the basis of aforesaid development, Mr. Mukhedkar submits that Executing Court is under obligation to determine individual share of legal representatives of original parties in suit. The aforesaid contentions cannot be countenanced for simple reason that shares of plaintiffs and defendants in original suit have been determined by Trial Court under decree. This is not a execution of any decree passed amongst legal representatives of original parties. Therefore, execution of decree has to be undertaken on the basis of shares determined by Court while passing decree in Special Civil Suit No.50/1989. The legal representatives of respective parties may further seek their

partition by filing separate proceeding, which can not be subject matter of execution of decree in present suit.

5. Although Mr. Mukhedkar relies upon observations of Supreme Court in case of ***Maddineni Koteswara Rao Vs. Maddineni Bhasaka Rao and Anr.***¹ to contend that in case of death of family member to whom share is allotted Court can amend share suitably, observations made by Supreme Court are in different context where composition of shares allotted under decree was changed after passing of decree. Such is not situation in present case.

6. So far as second contention raised by Mr. Mukhedkar that in Writ Petition No.1329/2024 earlier order appointing Court Commissioner for partition has been set aside by this Court, on perusal of order passed by this Court, it appears that, contention of Mr. Mukhedkar are fallacious. The order passed below Exhibit-27 in Special Darkhast No.10/2018 was subjected to challenge in said Writ Petition. The application below Exhibit-27 was filed with limited prayer for appointment of Court Commissioner for inspection of suit property to ascertain its condition. However, Trial Court had appointed Commissioner for partition of share, which was beyond prayers employed in Exhibit-27. In this background, this Court had set aside order passed below Exhibit-27

¹ 2009 AIR SCW 5319.

and relegated matter back to Executing Court for decision afresh on Exhibit-27.

7. The impugned order in present Writ Petition is passed on Exhibit-49, which was independently filed with specific prayer to appoint Court Commissioner for partition of suit property.

8. In that view of matter, this Court do not find any merit in Writ Petition. In result, Writ Petition stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/February-2026