

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIRST DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND

THE HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT PETITION NO: 35106 OF 2018

Between:

1. Mohd Afzal Khan, S/o Late Mohd Shamsheer Khan Aged about 57 years Occ.Business R/o H.No.19-4-387, Bahadurpura, Hyderabad A.P.
2. Smt.Zakiya Begum, W/o Late Syed Hafeez Aged about 61 years Occ. Housewife, R/o19-4-364/1/23/A, Chirag Ali Nagar Back side of alwa Hotel, Bahadurpura, Hyderabad 500 064.
3. Sri.Mohammed Aijaz Khan, S/o Late Mohammed Rahman Khan Aged about 40 years Occ.Business, Presently residing at 20-4-631/3, Chowk Shah Gunj, Charminar, Hyderabad - 500 002
4. Smt.Sultana Begum, W/o Late Mohd.Yousuf Khan 19-4-392 Bahadurpura near Jamiya Majid, Bahadurpura, Hyderabad 500 064.

...PETITIONERS

AND

1. State of Telangana, represented by the Principal Secretary, Revenue Department, Secretariat, Hyderabad.
2. The Special Chief Secretary, Revenue Department, State of Telangana, Hyderabad.
3. Commissioner of Survey, Settlements and Land Records (Jagir Administrator wing) Survey Bhavan, Narayanguda, Hyderabad.
4. State Bank of India, (Formerly known as State Bank of Hyderabad) Gunfoundary Branch, Abids, Hyderabad Rep By its Branch Manager.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction more particularly in the nature of Writ of Mandamus or any other appropriate writ, and

(i) Directing the Respondent No.1-4 not to release the five sealed jewelry boxes deposited with the Respondent No. 4 in safe deposit boxes being (i) 20/57-102 dated 5 July 1961 (ii) 21/24-160 dated 31 July 1962 (iii) 22/17-172 dated 10 June 1963 (iv) 45812 dated 8 April 1976 and (v) 70058 dated 24 April 1980, to any third party without deciding the rights and share of the Petitioners in the above property or otherwise it would violate the Fundamental Rights guaranteed to the Petitioners under article 14, 19 (1)(g) and 300-A of the constitution of India and consequently direct the Respondents No.1 to 4 to decide the rights and shares of the Petitioners in the Jewelry which is in the custody of the 4th Respondent before taking any decision to deliver the jewelry to any third party and pass such order or orders as this courts deems fit and proper in the interest of justice.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondent No. 1 to 4 not to release the jewelry which is the custody of the 4th respondent herein in the five boxes namely being (i) 20/57-102 dated 5 July 1961 (ii) 21/24-160 dated 31 July 1962 (iii) 22/17-172 dated 10 June 1963 (iv) 45812 dated 8 April 1976 and (v) 70058 dated 24 April 1980 to any third party pending disposal of this writ petition.

Counsel for the Petitioners: M/s. SNEHA BHOGLE

Counsel for the Respondent No.1 to 3: GP FOR REVENUE

The Court made the following: ORDER

THE HON'BLE THE ACTING CHIEF JUSTICE SUJOY PAUL
&
THE HON'BLE SRI JUSTICE N.V. SHRAVAN KUMAR

Writ Petition No.35106 of 2018

ORDER: *(as per the Hon'ble Sri Justice N.V.Shravan Kumar)*

This writ petition is filed seeking a direction to respondent Nos.1 to 4 not to release the five sealed jewellery boxes deposited with respondent No.4 in safe deposit boxes being (i) 20/57-102 dated 05.07.1961; (ii) 21/24-160 dated 31.07.1962; (iii) 22/17-172 dated 10.06.1963 and (iv) 45812 dated 08.04.1976 and (v) 70058 dated 24.04.1980 to any third party without deciding the rights and share of the petitioners in the above property or otherwise it would violate the fundamental rights guaranteed to the petitioners under Article 14, 19(1)(g) and 300-A of the Constitution of India and consequently direct respondent Nos.1 to 4 to decide the rights and shares of the petitioners in the jewellery which is in the custody of respondent No.4 before taking any decision to deliver the jewellery to any third party.

2. The petitioners herein claim to be legal heirs of defendant No.24 in C.S.No.7 of 1958 i.e., Smt.Raheem Unissa Begum w/o. Late Nawab Moin Ud Dowla Bahadur who is none other than the step mother of Late Nawab Zaheer Yar Jung

Bahadur. It is stated that after the demise of Nawab Moid Ud Dowla, the erstwhile HEH Nizam was pleased to appoint late Nawab Zaheer Yar Jung (defendant No.1 in C.S.No.7 of 1958) as Amir E Paigah of all the properties including movables and immovables belonging to Asman Jahi Paigah and his son Nawab Moin Ud Dowla Bahdur. It is further submitted that upon the direction of Nawab Zaheer Yar Jung (Amir E Paigah), the family members including Smt.Raheem Unissa Begum deposited all their movable and immovable properties including jewellery and artifact in his custody and later was confiscated by the Department of Customs, Bombay and the same was taken into custody by respondent No.3 and deposited in the safe custody of respondent No.4 being boxes (i) 20/57-102 dated 05.07.1961; (ii) 21/24-160 dated 31.07.1962; (iii) 22/17-172 dated 10.06.1963 and (iv) 45812 dated 08.04.1976 and (v) 70058 dated 24.04.1980.

3. It is the further case of petitioners that Late Nawab Zaheer Yar Jung being the only custodian of the jewellery and the said movables and artifacts, and at no point of time assigned/transferred or conveyed the said jewellery in favour of third parties. It is submitted that C.S.No.7 of 1958 was filed by one Sultan Jahan Begum against Nawab Zaheer Yar Jung

seeking partition and separate possession of the property belonging to Nawab Moin Ud Dowla Bahdur. During the pendency of the said suit, some of the defendants have entered into compromise with the plaintiff in pursuance of which preliminary decree was passed by this Court on 06.04.1959. As per the said decree, Smt.Raheem Unissa Begum i.e., defendant No.24 was entitled to her share in all the properties of Asman Jah including Jagir and other properties belonging to the Nawab Moin Ud Dowla.

4. As the matters stood thus, the Nizam E Atiyat was pleased to conduct enquiry and after enquiry, issued Muntakab No.3 in favour of Smt.Raheem Unissa Begum and other family members and that Smt.Raheem Unissa Begum passed away on 13.03.1970 issueless. In view of the same, all the legal heirs of Smt.Raheem Unissa Begum will be entitled for their respective shares as per Mohammaden Law. It is also submitted that Smt.Raheem Unissa Begum during her life time had gifted her share in all movable and immovable properties to her nephews (i) Mohd.Hussain Khan, (2) Mohd.Shamsheer Khan and (3) Mohd.Ghous Khan in the year 1965 and the receiver was paying jagir commutation amount from time to time to Smt.Raheem Unissa Begum and after her demise the said amounts were

credited to the account of suit itself. Thereafter, the nephews of Smt. Raheem Unissa Begum filed O.S.No.1254 of 1972 on the file of III Assistant Judge, City Civil Court, Hyderabad against the Jagir Administrator seeking declaration that they are the legal heirs of Late Smt. Raheem Unissa Begum and are entitled to get jagir commutation amount. The said suit was decreed holding that each of the said nephews is entitled to get 1/3rd share. Thereafter, the nephews while claiming the commutation amount filed proceedings before III Assistant Judge, City Civil Court, Hyderabad *vide* O.P.No.91/1972 seeking for issuance of succession certificate as successors of Late Smt. Raheem Unissa Begum. The III Assistant Judge, *vide* order dated 29.09.1975 had directed issuance of succession certificate in their favour.

5. It is submitted that petitioners herein are the surviving legal heirs of one of the nephews *viz.*, Mohd. Shamsheer Khan and have filed O.P.No.42 of 1993 on the file of III Assistant Judge for grant of succession certificate in their favour. The III Assistant Judge, *vide* order dated 10.05.1994 was pleased to grant succession certificate in the name of petitioners herein. It is therefore submitted that petitioners herein are legal heirs of deceased Smt. Raheem Unissa Begum and have their share in the properties both movables and immovables including the

subject jewellery boxes fallen to the share of Smt. Raheem Unissa Begum as per the preliminary decree of this Court and Nazim E Atiyat. It is submitted that entire share of Smt. Raheem Unissa Begum has not yet been delivered to her as per Sharia Law including the subject matter of this writ petition i.e., jewellery that has been seized and sealed by the Customs Department.

6. It is further submitted that one Mr. Rajesh Agarwal has filed W.P.No.31508 of 2018 before this Court seeking a mandamus to release the property i.e., the jewellery boxes in favour of third parties. It is further stated that if the prayer in W.P.No.31508 of 2018 is allowed the petitioners herein will be put to irreparable loss as the petitioners herein are alone entitled to the said jewellery boxes and that third parties who are interested in the subject matter have already approached respondent Nos.1 to 3 to release the said jewellery boxes in their favour. In such circumstances, petitioners are constrained to move this Court by way of this present writ petition.

7. It is pertinent to note that in O.P.No.91 of 1972 *vide* order dated 29.09.1975 the III Assistant Judge, City Civil Court, Hyderabad granted issuance of succession certificate in favour of petitioners therein for a sum of Rs.2,275/- per annum which is

lying in the deposit of Smt. Raheem Unissa Begum. It is also pertinent to note that petitioner Nos. 1, 2 and 4 herein along with 2 others have filed O.P. No. 42 of 1993 for issuance of succession certificate under Part X of the Indian Succession Act, 1925 in respect of the securities of the deceased Mohd. Shamsheer Khan who died on 01.01.1993. In the schedule, an amount of Rs. 20,000/- is lying in the fixed deposit bearing No. 877688/47/93 dated 27.04.1993 in Syndicate Bank, Bahadurpura Branch, Hyderabad and the succession certificate was issued only to the extent of above scheduled property. The petitioners herein, by filing both the succession certificates could not trace their status with the original defendant No. 24 in C.S. No. 7 of 1958 and even otherwise, the succession certificates only entitles the petitioners therein for claiming the amounts stated in the respective schedule.

8. A Division Bench of this Court on 09.01.2025 has closed C.S. No. 7 of 1958 and in the said suit the parties therein have filed memorandum of compromise and this Court in Appl. No. 126 of 1958 has recorded the said compromise and passed preliminary decree in terms of compromise on 06.04.1959. Thereafter, receivers cum commissioners were appointed to manage the affairs of suit properties initially for a period of one

year and later the term was extended. Subsequently, the Commissioners / Receivers have effected the partition of the lands as per the schemes and filed their report dated 20.12.1965 and affidavit dated 20.09.1966 in Application No.205 of 1966 with the following distribution statements:

A and F	Immovable properties
E	Shares and Securities
B	Exclusive property of Defendant No.1
C	Son of D1 Nawabzada Laeequddin Khan
D	Son of D1 Nawabzada Qutubuddin Khan
<u>Schedule A comprised of 254 items:</u>	To plaintiff items 2, 13, 14, 15 (as per the Decree) and also Fareed Villa.
4 Items	
128 items	Sold from time to time as per Court order
2 items	8 and 24 sold with consent in 276/60 dated 10.02.1961, 138/61, 146/61 and 70/62 on 19.11.1962
26 items	(Inclusive of F schedule) were partitioned as per order in Application 335/62
11 items	Lands given on Nuzool
<u>25 items*</u>	<u>(Maktha lands) (not released by the Revenue Department)</u> <u>As per para 4*g(of the Preliminary Decree</u>

50 items	Barracks at Jahanuma (valued as per Court order dated 13.12.1963 in Application No.335 of 1962)
1 item	(Item No.4) several building and land as Shamshabad
1 item	Item 25 at Aurangabad (no records available)
8 items	No 6 Akbar Bagh, Toli Chowki, and 26 Bahdood Nagar
Item 27	Total Kunta (Agricultural lands in possession of Tenants subject matter of litigation with Revenue Department)
Items 230 to 254 of 'A' schedule 1 item	Item 10 Moosa Ram Bagh possession taken over by Receiver
<u>'E' Schedule:</u> 1 Cash and Securities	Items 1 to 4 and 11 and 12 of the value of Rs.12,60,733/- (in the custody of Finance Department, Government of Andhra Pradesh.
2 Cash and Securities	Item 5 to 9 of value of Rs.4,07,800/-
3 Cash and Securities	Nizam State Railway Shares of Rs.78,000/- + Dividend 320/- (handed over to Receiver by Defendant No.1)

9. Thereafter, a final report has been filed in the form of an affidavit dated 22.12.1969 in Application No.228 of 1969 in which prayer has been made to pass a final decree in terms of

the Report, allotting the shares in items 1 to 229 only. This Court thereupon passed orders in Application No.228 of 1969 on 13.02.1970 accepting the report of the Receivers directing the Registry to draw a final decree in the suit and also passed orders discharging the Receiver by an order dated 10.06.1971 in Application No.88 of 1970 and has finally concluded that the draft final decree as per the order dated 13.02.1970 in Application No.228 of 1969 in the suit in respect of Items 1 to 229 of Schedule 'A' and Schedules 'B', 'C', 'D', 'E' and 'F' of preliminary decree to be engrossed on stamp papers giving a quietus to the suit in C.S. No.7 of 1958.

10. A Division Bench of this Court by order dated 20.12.2022 has appointed Mr.Mohd. Bande Ali, Retired District Judge and Mr. K.Ajith Simha Rao, Retired District Judge, as Receiver-cum-Commissioner for submission of report post drawal of preliminary decree to enable the Court to draw up the final decree. Thereafter, the new set of aforesaid Receiver-cum-Commissioner have filed a report dated 06.07.2023 to the effect of memorandum of compromise and preliminary decree. This Court on 07.07.2023 noted that Mr. Mohd. Bande Ali and Mr. Ajithsimha Rao, Receivers-cum-Commissioners have submitted report and directed that the report be furnished to the learned

counsel for the parties enabling them to file their objections to the report. Thereafter, objections were filed, from time to time, and vide order dated 26.07.2024, this Court directed the Registry to list the matter for final hearing. It is to be noted that various objections have been filed on behalf of the parties but no objections have been filed to the extent of subject properties in this writ petition. Most of the objections were filed with regard to the lands situated at Shamshiguda Village in schedule 'A' (item No.252). Accordingly the Division Bench of this Court while closing the said suit directed the Registry to draft a final decree as per the order dated 13.02.1970 in Application No.228 of 1969 in the suit in respect of item Nos.1 to 229 of schedule 'A' and Schedules 'B' 'C' 'D' 'E' and 'F' of preliminary decree and to engross the same on stamp papers.

11. We have heard learned counsel on either side and perused the material on record.

12. The petitioners at no point of time have filed any objections at the time of final hearing of the suit in C.S.No.7 of 1958 and also there is no mention about the subject jewellery boxes in the memorandum of compromise. Even in the preliminary decree dated 06.04.1959 also there is no mention

about the subject jewellery boxes, as such the same is not available for partition. Even in the succession certificate dated 10.05.1994 filed by the petitioners, it is clear that the said certificate was issued in respect of securities of deceased Mohd. Shamsheer Kham for an amount of Rs.20,000/-.

13. In view of all the observations made above, the prayer sought for in the writ petition is mis-conceived and the writ petition itself is devoid of merits and fails and accordingly stands dismissed.

Miscellaneous applications, pending if any, shall stand closed. No order as to costs.

SD/-P. PADMANABHA REDDY
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to M/s. SNEHA BHOGLE, Advocate [OPUC]
2. Two CCs to GP FOR REVENUE, High Court for the State of Telangana at Hyderabad [OUT]
3. Two CD Copies

BSR
BS

Bj

HIGH COURT

DATED: 21/03/2025

ORDER

WP.No.35106 of 2018



**DISMISSING THE WRIT PETITION,
WITHOUT COSTS**

⑥
29/03/25
bx