


MHOS010029062022 	Presented on	05	11	2022
	Registered on	08	11	2022
	Decided on	02	04	2026
	Duration	03 Y.	04 M.	24 D.

IN THE COURT OF DISTRICT JUDGE - 4 AT OSMANABAD
(Presided over by S.G. Thube)

Regular Civil Appeal No.99/2022
(Arising out of Civil Misc.Appln. No.42/2017)
Exh.37

1. Noorjanha w/o. Mahiboob Mujawar,
Age:- 50 years, Occu: Household,
R/o.: Kasbe-Tadwale,
Tal. and Dist. Osmanabad.

...Appellant.
(original non-applicant No.1)

-: **Versus** :-

1. Nazmunnisa Mahiboob Mujawar,
Age:- 46 years, Occu: Service,
R/o.: K-429, Sy.No.99/2B, Renuka
Grahnirman Sanstha, Majrewadi,
Solapur.
2. Tanvir Mahiboob Mujawar,
Age:- 21 years, Occu: Education,
R/o.: K-429, Sy.No.99/2B, Renuka
Grahnirman Sanstha, Majrewadi,
Solapur.
3. Afrin Mahiboob Mujawar,
Age:- 19 years, Occu: Education,
R/o.: K-429, Sy.No.99/2B, Renuka
Grahnirman Sanstha, Majrewadi,
Solapur.(original applicant No.1 to 3)
4. Aasma Mahiboob Mujawar,
Age:- 25 years, Occu: Household,
R/o.: Kasbe-Tadwale,
Tal. and Dist. Osmanabad.

5. Azhar Mahiboob Mujawar,
Age:- 23 years, Occu: Education,
R/o.: Kasbe-Tadwale,
Tal. and Dist. Osmanabad.
6. Anis Mahiboob Mujawar,
Age:- 21 years, Occu: Education,
R/o.: Kasbe-Tadwale,
Tal. and Dist. Osmanabad.
7. Rasul Mahiboob Mujawar,
Age:- 80 years, Occu: Nil,
R/o.: Kasbe-Tadwale,
Tal. and Dist. Osmanabad.
8. Maimuna Hasan Mujawar,
Age:- 62 years, Occu: Household,
R/o.: Kari, Tal. Barshi,
Dist. Solapur.
9. Rihana Rahimoddin Shaikh,
Age:- 58 years, Occu: Household,
R/o.: Pathanwadi Malad West,
Mumbai-400097.
10. Banu Sattar Shaikh,
Age:- 55 years, Occu: Household,
R/o.: Pathanwadi Malad West,
Mumbai-400097.
11. Sultana Allauddin Shaikh,
Age:- 52 years, Occu: Household,
R/o.: Navi Mumbai, Nerul- 400706. ...Respondents.
(original non-applicant No.2 to 5
& 6A to 6/D)

Appearance :

Shri. N.H. Padwal, learned advocate for appellent.

Shri.D.S. Chavan, learned advocate for respondent Nos. 1 to 3.

Exparte against respondent No.4, 6 and 7.

(respondent No.4 to 11 are formal parties)

J U D G M E N T

(Delivered on 02nd day of April, 2026)

1] Being aggrieved by the judgment/order passed by learned Civil Judge Senior Division, Osmanabad in Civil Miscellaneous Application No.42/2017 on 10.10.2022 thereby grant of heirship certificate in favour of respondent No.1 to 3 and issuing declaration that, respondent No.1 is the second wife of deceased Mahiboob Rasul Mujawar and respondent No.2 is the son of said deceased Mehiboob Rasul Mujawar and No.3 is the daughter of the said deceased Mehiboob Rasul Mujawar. (Parties to the proceeding referred as per their original status while discussing the rival facts of respective parties)

2] Brief facts are as under:-

Applicants filed civil Misc. Appln. No.42/2017 for grant of Succession Certificate and as per section 372 of Indian Succession Act, 1925. The deceased husband of applicant No.1 and non-applicant No.1 namely Mahiboob Rasul Mujawar died on 22.09.2006 at village Kasbe-Tadwale, Tal. and Dist. Osmanabad. The said Mehiboob Rasul Mujwara was servicing as a Assistant Teacher at Zilla Parishad primary school at village Dhorala, Tal. Kallam. Applicant No.1 is second wife of the said deceased Mehiboob Rasul Mujawar and applicant No.2 is the son and No.3 is the daughter of said deceased Mahiboob Rasul Mujawar. On retirement benefits of the service of deceased Mahiboob Rasul Mujawar having right of applicant No.1 and non-applicant no.1 in the capacity of legal-heirs of said deceased Mahiboob Rasul Mujawar. As well as, entitled for getting the amount of gratuity, group insurance and other amounts. Applicant No.2 is entitled to get job/service on the basis of *Anukampa* i.e. on the basis of

principle of compensate and for that purpose applicant No.3 is not having any objection. As per the Schedule-A require to grant 50% amount each of the service benefits of deceased Mahiboob to applicant and non-applicant No.1.

3] Further submitted that, on 19.03.2017 published notice in daily newspaper known as 'Sangharsh' for calling objection to the application of applicants. As per the said publication, non-applicant No.1 objected the proceeding filed by applicant by appearing before concern court on 04.07.2017 by way of filing say vide Exh.16. As per the said say, non-applicant No.1 denied the relationship between applicants and deceased Mahiboob Rasul Mujawar as pleaded by applicants. Hence, applicants are not entitled to obtain heirship and succession certificate as prayed. Non-applicant No.1 is the first and legally wedded wife of deceased Mahiboob Rasul Mujawar and from the said wedlock non-applicant No.1 begotten issues namely Aasma, Azhar and Anis i.e. non-applicant Nos.2 to 4. For the purpose of obtaining job/service on compensate basis (*anukampa*) not required succession certificate, but required to obtain heirship certificate. Hence, the application filed by applicants is not maintainable in the eyes of law. Applicants filed this application only with intention to harass non-applicant No.1 and others. Thus, in short, non-applicant No.1 and others prays for rejection of application with cost.

4] On the basis of rival pleadings of applicant and non-applicant No.1 and after hearing the arguments as advanced by both sides ld. Counsels. Concern Ld. C.J.S.D. delivered judgment on 10.10.2022 and declared that applicant No.1 is the second wife of deceased Mahiboob Rasul Mujawar and applicant No.2 is the son and applicant No.3 is the daughter of said deceased Mahiboob Rasul

Mujawar. As well as, grant heirship certificate in favour of applicants and non-applicants.

5] Appellant through appeal memo submitted that, the impugned judgment is erroneous and against the provision of law. As well as, ld. Trial court failed to appreciate properly the facts and evidence which placed on record on behalf of respective parties before its court in its proper prospective. So also, fails to frame issues properly. As per the objection of appellant befroe Ld. Trial court, she submit that, respondent No.1 to 3 not having any concern with deceased Mahiboob Rasul Mujawar. So also, denied relationship between respondent No.1 to 3 and deceased Mahiboob Rasul Mujawar as alleged by respondent No.1 to 3. But ld. Trial court failed to consider the say/objection of appellant and straight-way come to wrong conclusion and passed impugned order. Hence, by way of interference, it is required and necessary to set aside the impugned order.

6] Further submitted that, respondent No.1 in her oral evidence i.e. in her cross-examination which conducted before ld. Trial court admitted deceased Mahiboob Rasul Mujawar performed marriage with appellant and from the said wedlock she begotten respondent No.4 to 6 as a issues from said deceased Mahiboob Rasul Mujawar. Respondent No.1 to 3 filed application under section 372 of the Indian Succession Act. But ld. Trial court suomoto grant certificate under section 2 of the Bombay Regulation Act. Hence, on that ground also, impugned order is required to be set aside by interfering in the reasoning and findings which recorded by ld. Trial court. Respondent No.1 before ld. Trial court in support to prove her marriage with deceased Mahiboob Rasul Mujawar adduced on record whatever oral

evidence of witness Amjat Sayyad Mohmad Kazi vide Exh.26. The said witness in his cross-examination admitted he has not performed the marriage of respondent No.1 and deceased Mahiboob Rasul Mujawar. As well as, admitted that after the death of his father, where required to put-up signature, he signed there. Thus, it is crystal clear that, as per the said oral evidence of said witness of respondent No.1, the marriage between respondent No.1 and deceased Mahiboob Rasul Mujawar is not proved properly. But the Id. Trial court failed to consider the same. Thus, in view of above mentioned material averments and other averments as mentioned in appeal memo, prays for setting aside the impugned order by allowing this appeal.

7] On the basis of pleading i.e. grounds raised in appeal memo and carefully gone through the judgment and decree which passed by Id. C.J.S.D. in Civil Misc. Application No.42/2017. As well as carefully gone through the documents which are placed on record on behalf of both the parties. According to my opinion, following points are arise for my determination, my finding and reasoning on the said points are stated hereinafter in the foregoing para of the judgment are as under :

	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether appellant has succeeded to show /prove that Ld. C.J.S.D. passed whatever judgment/order in Civil Misc. Application No.42/2017 is contrary to the relevant provision of law and facts and evidence on record. Hence, the said reasoning and finding which recorded by Ld. Trial Court requires interference at the hands of this Court ?	In the partly affirmative.

2	What order ?	As per final order.
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REASONS

AS TO POINT NO. 1:

8] As to this point, Ld. Counsel on behalf of appellant argued in the line of grounds raised in appeal memo i.e. submit that, the ld. Trial court delivered whatever impugned judgment is contrary to the facts on record and against the provision of relevant laws i.e. respondent No.1 to 3 seek succession certificate. But ld. Trial court without considering their aforesaid prayer grant heirship certificate in favour of respondent No.1 to 3 and appellant, her issues i.e. respondent No.2 to 4 and parents as well as sisters of deceased Mahiboob Rasul Mujawar. The said approach of the ld. Trial court is contrary to the provision of Indian Succession Act i.e. it is a fact that, mother of deceased Mahiboob Rasul Mujawar is died and after her death, bring on record her daughters as a legal-heirs of said mother. But the said daughters i.e. sister of deceased Mahiboob Rasul Mujawar are not included in Class-I heirs as per the provision of Indian Succession Act, 1925. Hence, to that extent it is required and necessary to make interference in the reasoning and finding which recorded by ld. Trial court.

9] Further argued that, respondent No.1 to 3 before ld. Trial court failed to prove properly the marriage between respondent No.1 and deceased Mahiboob Rasul Mujawar i.e. the kazi who performed the said marriage is not alive. Hence, respondent No.1 adduced on record oral evidence of son of said kazi. The said son of the aforesaid kazi admit that, the marriage between respondent No.1 and deceased

Mahiboob Rasul Mujawar is not performed by him. But his father performed the said marriage and he signed where his father was not signed. Thus, in view of such type of vague evidence, it is not just and proper to hold that, the marriage of respondent No.1 is performed with deceased Mahiboob Rasul Mujawar as a second marriage and from the said wedlock respondent No.1 begotten respondent No.2 and 3 as son and daughter and they are legal-heirs of deceased Mahiboob Rasul Mujawar. But ld. Trial court failed to consider the said aspect and declared her status as a second wife of deceased Mahiboob and legal son and daughter as respondent No.2 and 3 is contrary to provision of relevant law. Hence, requires interference at the hands of this court in the said reasoning and finding which recorded by ld. Trial court.

10] Again argued that, before ld. Trial court respondent No.1 to 3 nowhere seek the prayer of grant of heirship certificate. On the contrary, seek the prayer of grant of succession certificate. But ld. Trial court on its own accord grant heirship certificate in favour of appellant and all respondents. The said approach of the ld. Trial court is not legal and proper. Hence, on that ground also, it is required and necessary to make interference in the reasoning and findings which recorded by ld. Trial court. Thus, in view of above mention material argument points and other argument points as argued at length prays for allowing the appeal by setting aside impugned order which passed by ld. Trial Court in Civil Misc. Appln No.42/2017 which passed on 10.10.2022.

11] On the other hand, the ld. Counsel on behalf of respondent No.1 to 3 has given sufficient opportunities for arguing this appeal, but fails. But through their reply vide Exh.24 submitted that, the ld. Trial court delivered whatever impugned judgment and order is

legal and proper and delivered by carefully considering rival facts and evidence which adduced on record on behalf of both the parties. Hence, there is no any necessity to make any interference in the said reasoning and finding which recorded by Id. Trial court. Then submitted that, appellant filed this appeal only with intention to harass these respondents. The appeal filed by appellant is not maintainable in the eyes of law.

12] Respondent No.1 is legally wedded wife of deceased Mahiboob Rasul Mujawar and respondent No.2 is son and No.3 is daughter of said Mahiboob Rasul Mujawar and the said marriage of respondent No.1 is properly proved by her before Id. Trial court. Hence, there is no any necessity to make any interference in the reasoning and finding which recorded by Id. Trial court. Appellant is having only intention to grab the amount of service benefit of deceased Mahiboob Rasul Mujawar. Respondent No.1 and deceased Mahiboob Rasul Mujawar married as per their Muslim custom and it is their valid marriage as per personal Muslim Law. Hence, in the defence of appellant that, the said marriage is not legal and proper is not having any substance.

13] Further submitted that, respondent No.1 before Id. Trial court proved her marriage with deceased Mahiboob Rasul Mujawar by adducing oral evidence of competent witness. So also, producing marriage certificate and marriage wedding-card. Hence, again submit that, Id. Trial court passed whatever impugned order in respect of declaration of the status of respondent No.1 to 3 is legal and proper and there is no any necessity to make any interference in the reasoning and finding which recorded by Id. Trial court. Thus, in view of above mention material averments and other averments as mention submit

that, ld. Trial court passed whatever judgment/order is legal and proper. Hence, there is no any necessity to make interference in the reasoning and findings which recorded by ld. Trial court.

14] Thus, considering the argument as advanced by ld. Counsel on behalf of appellant and objections which raised by respondent No. 1 to 3 through their say vide Exh.24. It appears that, ld. Trial court while passing impugned judgment/order in respect of grant of heirship certificate in favour of deceased mother i.e. her legal-heirs means in favour of her daughters i.e. in favour of respondent Nos. 8, 9, 10 and 11 issued whatever heirship certificate is not legal and proper. Because, the sister of deceased Mahiboob Rasul Mujawar are not involved in Class-I heirs of deceased Mahiboob Rasul Mujawar i.e. it is a fact that, respondent Nos.8 to 11 are not involved in Class-I heirs of deceased Mahiboob Rasul Mujawar. Hence, in respect of grant of heirship certificate in favour of respondent Nos. 8 to 11 there is necessity to make interference in the reasoning and finding which recorded by ld. Trial court.

15] Further carefully gone through impugned judgment, it appears that, ld. Trial court while granting heirship certificate in favour of appellant and respondent No.1 to 7 has not committed any error/illegality. Because, it is a fact that, appellant is the first wife of deceased Mahiboob Rasul Mujawar and respondent No. 4 to 6 are the legal-heirs issues of appellant and deceased Mahiboob Rasul Mujawar. So also, it is a fact that, in view of proving marriage by respondent No.1 before ld. Trial court with deceased Mahiboob Rasul Mujawar appears that, she is second wife of said deceased Mahiboob Rasul Mujawar and respondent No.2 and 3 are her issues i.e. son and daughter. As well as, it is a fact that, respondent No.7 is the father of

deceased Mahiboob Rasul Mujawar. As well as, respondent No.1 before Ld. Trial court admitted that, appellant is the wife of deceased Mahiboob Rasul Mujawar and respondent No.4 to 6 are their issues. So also, admit that, deceased Mahiboob Rasul Mujawar was servicing as a Assistant Teacher in Z.P. School. So also, respondent No.1 before ld. Trial court properly proved that, on 23.07.1995 her marriage is performed with deceased Mahiboob Rasul Mujawar with the help of the document vide Exh. 84, extract of entry of the said marriage in registered of kazi of the same date vide Exh.29, so also, in view of marriage certificate issued on 22.10.2016 vide Exh.30 by Amjat Sayyad Kazi i.e. witness of respondent No.1. On the contrary, in service record of deceased Mahiboob Rasul Mujawar disclose the name of appellant in the capacity of legal-heir as a wife for 100% and to respondent No. 5 and 6 as 35 % each and to the respondent No.4 as 30% and in the said service record mentioned that, after death of said Mahiboob Rasul Mujawar, respondent No.1 to 3 in the capacity of legal-heir not entitled for any service benefits. Hence, I hold that, while granting heirship certificate in favour of appellant and respondent No.1 to 7 ld. Trial court has not committed any illegality or mistake.

16] Further appears that, the ld. Trial court in para No.23 of impugned judgment observed that, whether respondent No.2 is entitled to get job/service on compensate base and whether respondent No.1 is entitled to get service benefits of deceased Mahiboob Rasul Mujawar is not the subject matter of Civil Misc. Application No.42/2017 is legal and proper. Because, after carefully gone through the Civil Misc. Application of respondent No.1 to 3, they only prays for issuing heirship certificate in respect of that, they are legal-heirs of deceased Mahiboob Rasul Mujawar. Hence, ld. Trial court through reasoning

and finding and in view of admission of respondent No.1 in her cross-examination. As well as, in view of proving the marriage of respondent No.1 with deceased Mahiboob Rasul Mujawar, as per Bombay Regulation 8 section 2 issued whatever heirship certificate in favour of appellant and respondent No.1 to 7 is legal and proper. But illegal in respect of respondent No.8 to 11. Because the sisters of deceased Mahiboob Majawar are not involved in the Class-I heirs of deceased Mahiboob. In application, But respondent No.1 to 3 through their application i.e. Civil Misc. Application, nowhere seek declaration in respect of declaring respondent No.1 as second wife of deceased Mahiboob Rasul Mujawar and nowhere seek declaration in respect of respondent No.2 is the son and respondent No.3 is the daughter of said deceased Mahiboob Rasul Mujawar. Then also, I hold that, ld. Trial court while granting said declaration has not committed error or illegality. Because in view of proving marriage by respondent No.1 with deceased Mahiboob, automatically they became legal-heirs of deceased Mahiboob. As well as, though respondent No.1 to 3 in their Civil Misc. Application nowhere prays for grant of any other just and proper relief in favour of respondent No.1 to 3. Then also, in view of aforesaid declaration learned trial court has not committed illegal or error. Thus, I hold that, it is not required and necessary to make interference in the said relief which grant by ld. Trial court of declaration. Because, respondent No.1 succeeded to prove her marriage with deceased Mahiboob Rasul Mujawar. So also, succeeded to show that, respondent No.2 and 3 are son and daughter of deceased Mahiboob Rasul Mujawar. Thus, in result of above reasoning I recorded my finding on point No.1 in the partly affirmative. Accordingly, I proceed to pass following order :-

OPERATIVE ORDER

i)	The Regular Civil Appeal No.99/2022 is hereby partly allowed.
ii)	The Judgment/order which passed by learned Civil Judge Senior Division, Osmanabad in Civil Misc. Application No.42/2017 on 10.10.2022 is hereby modified to the extent of issuing heirship certificate in favour of appellant and all respondents i.e. by way of order of this Court issue heirship certificate of the heirs of deceased Mahiboob Rasul Mujawar in favour of appellant and respondent Nos.1 to 7 i.e. appellant and respondent No.4 to 6 as well as, in favour of respondent No.1 to 3 and in favour of respondent No.7 in the capacity of father of deceased Mahiboob Rasul Mujawar and rejected in respect of respondent Nos.8 to 11.
iii)	Parties to appeal bear their own costs.
iv)	Decree be drawn up accordingly.
v)	Copy of this judgment alongwith record and proceeding of Civil Misc. Application No. 42/2017 be sent to the learned Trial Court for necessary action and information.

Osmanabad.
Date : 02.04.2026

[S. G. Thube]
District Judge-4, Osmanabad.