

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

Civil Revision Application No. 45 of 2015

- 1) Beersing Charan Karosiya
Age 63 years,
Occupation Service.
- 2) Kisan Charan Karosiya
Age 66 years,
Occupation : Pensioner.
- 3) Ranjeet Charan Karosiya,
Age 58years,
Occupation: Service.
All R/o Nehru Colony, Bhingar,
Taluka Nagar,
District Ahmednagar. **.. Petitioners.**

Versus

- 1) Tanhabai Pratap Karosiya
Age 62 years,
Occupation : Household.
- 2) Arjun Pratap Karosiya
Age 51 years,
Occupation: Labour,
Both R/o Vadarwadi,
Octroi Naka, Bhingar,
Taluka Nagar,
District Ahmednagar.
- 3) Vijay Charan Karosiya
Died through his legal
representatives
- 3a) Usha Vijay Karosiya
Age 47 years,
Occupation : Service,
R/o Nehru Colony, Bhingar,
Taluka Nagar, District Ahmednagar.

- 3b) Deepa Anand Baggan,
Age 25 years,
Occupation : Housewife,
R/o Nehru Colony, House No.50,
Bhingar, Taluka Nagar,
District Ahmednagar.
- 3c) Priya Sidharth Khare,
Age 21 years,
Occupation: Housewife,
R/o 930, Kasaba Peth,
PMC Colony No.5, Pune.
- 3d) Rachana Prashant Bewal,
Age 19 years,
Occupation: Housewife
R/o Pimpri Chinchwad,
Guru Pimpale, Galli No.1,
Shriram Colony, Pune.
- 3e) Mona Vijay Karosiya
Ag 15 years, Occupation : Nil.
- 3f) Akshay Vijay Karosiya
Age 17 years,
Occupation : Nil
3e and 3f are minors,
through their legal guardian
mother - respondent No.3a
R/o Nehru Colony, Bhingar,
Taluka Nagar, District Ahmednagar. .. **Respondents.**

Shri. Mahesh R. Sonawane, Advocate, for petitioners.

Shri. D.R. Irale-Patil, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 26th NOVEMBER 2015

JUDGMENT:

1) Rule. Rule made returnable forthwith. Heard both the sides by consent for final disposal.

2) The present proceeding is filed to challenge the judgment and order of Regular Civil Appeal No.271 of 2009 which was pending in the Court of the Principal District Judge, Ahmednagar. The appeal was filed by the present respondent Nos.1 and 2 to challenge the decision of application which was filed under section 383 of the Indian Succession Act 1925 (hereinafter referred to as "the Act"). In the application bearing Civil Misc. Application No.81/2008 the present respondent Nos.1 and 2 had challenged the succession certificate granted in favour of present petitioners in Misc. Application No.91/2007 which was filed under section 372 of the Act. The trial Court had refused to revoke the succession certificate but the appeal is allowed by the District court and the certificate is revoked.

3) The application bearing No.91/2007 which was filed under section 372 of the Act was filed by present

petitioner Beersing Karosiya, a brother of deceased Pratap Karosiya. The respondents of the said proceeding were other brothers of Pratap. Pratap was working as driver in Zilla Parishad Ahmednagar and he died on 20-2-2007 while he was in service. Pratap had rendered pensionable service. The amounts like provident fund, gratuity and amount of insurance are payable in respect of the service of Pratap from his office. The other brothers had given no objection for giving certificate in favour of Beersing. The procedure was followed like publishing notice of the proceeding in news paper, publishing of notice in Court campus etc. Nobody had taken objection. Evidence on affidavit was given and on that basis the certificate was issued on 11-2-2008.

4) In the application bearing No.81/2008 under section 383 of the Act, Tanhabai, applicant No.1 of that proceeding contended that she is widow of Pratap. Other applicant Arjun of that proceeding contended that he is son of Tanhabai born from Pratap. It was contended that marriage of the deceased with Tanhabai had taken many years back as per Hindu rites and custom and it was

contended that they are the legal heirs of Pratap. They also contended that they had already obtained certificate of heirship on 8-10-2007 in Misc. Application No.86/2007. They contended that in the application filed by Beersing under section 372 of the Act they were not parties and they had no knowledge about filing of such application though notice was published. They contended that by playing fraud and by misleading the Court Beersing had obtained the certificate. They contended that when Beersing filed succession certificate in Zilla Parishad office for getting aforesaid amounts they came to know about issuance of such certificate. They admitted that Beersing and respondents of proceeding No.81/2008 were brothers of deceased Pratap but they contended that as they are widow and son, the succession certificate cannot be granted in favour of brothers of Pratap. They prayed for revocation of the certificate. Tanhabai wants to claim aforesaid amounts and the family pension.

5) Misc. Application No.81/2008 was contested by present applicants, brothers of Pratap. They denied that deceased was married and Tanhabai is widow of the

deceased and Arjun is son of the deceased. They contended that the deceased had nominated his younger brother Indal for getting the amounts in the office of Zilla Parishad. They contended that Beersing was taking care of Pratap during his last days. They contended that Tanhabai had married with one Mohan Sonawane and respondent No.2 was born to Tanhabai from said Mohan Sonawane. They contended that Saraswatibai and Indubai are other two issues of Tanhabai born from Mohan Sonawane. They contended that Arjun is married and his issues also are using the surname as Sonawane. They contended that Tanhabai had not taken divorce from Sonawane and she had not performed marriage with deceased Pratap. They contended that by misleading the Court, Tanhabai has obtained heirship certificate and they had no knowledge about pendency of the proceeding filed by Tanhabai for issuance of such certificate. They contended that they were not party to the said proceeding and so the said certificate is not binding on them.

6) Both sides gave evidence in Application No.81 of 2008. The Court considered the evidence given by both

sides, both documentary and oral, and the trial Court held that there was no evidence on the marriage of Tanhabai with Pratap. As there was no material to show that Tanhabai and Arjun have better title, the trial Court had dismissed the application. The learned Principal District Judge held that as already heirship certificate was issued in favour of Tanhabai and as it was not cancelled or revoked, this circumstance needs to be considered against brothers of Pratap. The Appellate Court held that there is evidence to show that Tanhabai had admitted Pratap in his last days in the hospital and this circumstance is consistent with her case. The Appellate Court further held that there was cohabitation between Tanhabai and deceased Pratap and so there was sufficient material to make out case of relationship of husband and wife.

7) On one hand there was heirship certificate granted in favour of Tanhabai under the provision of the Bombay Regulations Act 1827 and on the other hand relationship of the applicants from the proceeding No.81/2008 with Pratap was not disputed by Tanhabai. In view of these circumstances, the schemes of both these

Acts need to be considered and the material needs to be considered to ascertain as to whether there was sufficient material on the basis of which the certificate granted under section 372 of the Act could have been revoked.

8) The provisions of the rules made under the Bombay Regulations Act 1827 show that they are framed for recognition of heirship. The provisions show that ordinarily even without having such certificate the heirs can manage the property of the deceased and they can sue or defend the proceedings in respect of property of the deceased both movable and immovable. In spite of this position of law, if the heirs request for certificate, the procedure required in this Act needs to be followed. The procedure involves issuance of proclamation. If no objection is taken to the proceeding, the recognition can be granted by the Court. If there is objection and the objection involves the questions which are complicated or difficult, the Judge has power to suspend the proceeding till issues are tried by regular suit. The procedure further shows that refusal to give recognition does not finally determine the rights and the party who had come to the

Court, can file suit for establishing the claims. Thus no title to the property is decided and only recognition to heirs of the deceased is given if the proceeding is not contested as already observed.

9) In Part X of the Act there are provisions regarding issuance of succession certificate. Certificate can be granted in respect of the property of the deceased which goes to the heirs of the deceased. In the present matter the brothers had claimed succession certificate in respect of provident fund and gratuity amount and such certificate can be issued in respect of provident fund as it is treated as security. Provisions of Sections 372 and 373 of the Act show that inquiry involved in this application is of summary nature and limited investigation is required to be made. These provisions show that public notice is required to be issued of this proceeding. Section 372 (3) of the Act shows that even if intricate questions of law or fact are involved which cannot be decided in summary manner, the Court may grant the certificate if the applicant has prima facie case. Thus in this provision even when there is summary procedure given and there is

contest, the succession certificate can be issued. Inquiry after framing of issues etc. is required if there is contest but that inquiry is also summary in nature. The provisions show that the purpose of giving such certificate is to give authority to the holder of certificate to realize the debt or security of the deceased and to give valid discharge. Thus, this is only authority given to the holder of the certificate to collect security or realize the debt and it needs to be presumed that the amounts so collected need to be disposed of in accordance with the rights of the persons who are entitled to this amount. That is the duty imposed on the person who is holding the certificate. This certificate is conclusive as against the persons owing such debt or who are liable to such security as provided in section 381 of the Act. Thus, the certificate cannot be used against the legal heirs of the deceased who have better title.

10) The provision of section 383 of the Act, which provides for revocation of the certificate, gives the grounds on the basis of which the certificate can be revoked. One of the grounds is that procedure which was

conducted to obtain the certificate was defective in substance and there is another ground that the certificate was obtained fraudulently. These two grounds are considered by the Appellate Court.

11) The learned counsel for the brothers placed reliance on two reported cases of this Court like (1) **AIR 2007 Bombay 193 (Vaijantabai vs. Janardhan)** and **AIR 1997 Bombay 275 (Sharad v. Ashabai)**. In the first case when a proceeding was filed by real brothers of the deceased for succession certificate and objection to it was taken by a lady and her two issues by contending that she was the widow of the deceased and the issues were born from deceased and when their relationship with the deceased was challenged by the brothers of the deceased, this Court held that burden was on this lady and her issues to prove the relationship. This Court held that though the inquiry involved is of summary nature, there has to be minimum material for a party to be entitled to the succession certificate and in that case it was held that brothers of the deceased were on higher pedestal than the aforesaid lady and her issues whose relationship with the

deceased was not proved. In the second case, in a probate proceeding this Court held that when status of the wife was in dispute it would not be proper to give declaration under section 263 of the Act. Under section 5 of the Hindu Marriage Act 1955 marriage of a Hindu is void when the spouse from the first marriage is alive. There is specific contention against Tanhabai that she had married with one Mohan Sonawane. There is another contention that there was no marriage between this lady and deceased Pratap.

12) The record of the proceeding of the brothers of the deceased shows that respondent No.2 Arjun was using the name of Mohan as his father and he was using surname as Sonawane. There is school leaving certificate at Exhibit 46 in that regard. This record shows that year of birth of Arjun was recorded in the school as 1967. At Exhibit 47 there is similar record in respect of sister of Arjun. She had also used her surname as Sonawane. The year of her birth was shown in the school record as 1963. Witness like Headmistress of the school which issued these two certificates is examined by the brothers of

Pratap to prove this record. There is more material produced by the brothers like bona fide certificate of son of Arjun showing that the son of Arjun is also using the surname as Sonawane. In view of this record it was necessary for Arjun to step into witness box to give evidence in that regard. But no such evidence is given.

13) The brothers of Pratap have given more evidence by examining Ravindra, employee of office of the Collector to show that ration card was issued for the family of Vijay, brother of Pratap and with the family of Vijay, Pratap was living. This record is duly proved. It needs to be mentioned that the lady Tanhabai has admitted relationship of Beersing with Pratap.

14) On the other hand, Tanhabai gave evidence on oath that her marriage with Pratap was solemnized in the year 1972. However, no specific year of the marriage was given in the application filed for revocation of the certificate. No evidence is given to prove the marriage and no independent witness is examined to prove that Tanhabai was cohabiting with Pratap. No evidence

regarding birth of the issues is given. Tanhabai is relying on one circumstance like she had admitted Pratap in the hospital during his last days. One doctor is examined to prove this circumstance. Though one ration card is produced, no evidence was given to prove this record by Tanhabai.

15) The aforesaid record which is proved by brothers of Pratap shows that prior to 1967 Arjun and his sisters were born but Tanhabai is claiming that her marriage took place with Pratap in the year 1972. She came to the Court with specific contention that the issues were born to her from Pratap. There is no record whatsoever of the year pre-2001 with this lady even to show cohabitation. The difference in the age of Arjun and Pratap was hardly 10 years as per the record on which they want to rely. All these circumstances are against Tanhabai. But these circumstances are not at all considered by the District Court. Surprisingly the District Court has made observation that the society had accepted Tanhabai as wife of Pratap when no one is examined even to prove cohabitation.

16) The learned counsel for Tanhabai placed reliance on a case reported as **2015(6) Mh.L.J. 11 (Laxmidevamma vs. Ranganath)** (Supreme court). In this case the Apex Court has laid down that when there are concurrent findings of fact such findings cannot be upset by High Court unless the findings recorded by lower Courts are shown to be perverse. There cannot be any dispute over this proposition. The finding of the trial Court is in favour of the brothers and there was material of aforesaid nature in favour of the brothers. On the other hand there was virtually nothing with Tanhabai to prove the marriage or even cohabitation but the District Court has set aside the order of the trial Court and has revoked the succession certificate. In view of the submissions made by learned counsel for Tanhabai, this Court holds that opportunity needs to be given to her to lead evidence to prove that there was marriage and the marriage was legal. In view of this, this Court holds that the decision given by the District Court and trial Court need to be set aside and the matter needs to be remanded to the trial Court. Before remanding the matter it needs to be mentioned that the certificate issued in favour of Tanhabai

under the provision of Bombay Regulation Act 1827 cannot be considered against brothers of deceased in view of the scope of provisions of that Act and in view of Section 383 of the Act which provides that only certificate issued like succession certificate, probate, letter of administration prior to the date of issuance of certificate in question can be considered. The trial Court also needs to keep in mind that succession certificate can be granted after making out prima facie case and it may be revoked only when the aforesaid grounds are made out for revocation of the certificate. It is necessary for Tanhabai to show that she had married with Pratap and this marriage was legal.

17) In the result, the proceeding is allowed. The judgment and order of the District Court and trial Court are hereby set aside. The matter is remanded back to the trial Court for fresh trial. The parties to appear before the trial Court on 8th January 2016. Rule made absolute in the above terms.

Sd/-
(T.V. NALAWADE, J.)

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