

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

WRIT PETITION NO. 1836 OF 2013

1. Vasantao Tukaram Shirodkar,
Age: 88 years, Occu. Pensioner,
R/o Galli No. 7, Dhule, Tq. &
Dist. Dhule
2. Pravin S/o Ganpatrao Butala,
Age: 60 years, Occu. Business,
R/o Sonar Lane, Khed, Tq. Khed,
Dist. Ratnagiri.
3. Prasad S/o Ganpatrao Butala,
Age: 50 years, Occu. & R/o as above.
4. Sow Vijaya W/o Manohar Wandekar,
Age: 40 years, Occu. Household,
R/o as above.

(Petitioner No. 2 to 4 are filing
this petition & will be represented
by their power of attorney holder
namely petitioner No. 1
Notarized copy of power of attorney
enclosed)

...PETITIONERS

versus

Sow Ranjana Chandrakant Sonwane,
Age : 55 years, Occu. Household,
R/o Khot Galli, Dhule,
Tq. & Dist. Dhule

...RESPONDENT

.....
Mr. Prashant Deshmukh, Advocate for Petitioners
Mr. P.S. Paranjape, Advocate for respondent
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 11th AUGUST, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel
for parties finally, by consent.

2. The petitioners are before this court aggrieved by order dated 18-02-2013 on Exhibit-138 in the proceedings pending before the Civil Judge Senior Division, Dhule bearing Probate and Letter of Administration Application/ Miscellaneous Application No. 86 of 1997. Without going into earlier events in the matter, suffice it to say that, present petitioners - respondents in said proceedings, moved application Exhibit-138 contending that civil judge, senior division would not be a proper authority to deal with the proceedings as have been filed, referring to various provisions of Indian Successions Act and Maharashtra Civil Courts Act and further contended that provisions of Maharashtra Civil Courts Act would not govern and contain provisions under the Central Enactment.

3. Learned counsel for respondent fairly points out a decision rendered by division bench at principal seat of this High Court in *writ petition No. 2777 of 2013 (Smt. Nola Jonathan Ranbhise vs. The Union of India and others)* and thus concedes to the position emerging therefrom. The division bench in its operative order of said judgment has declared thus-

“50] Accordingly, we pass the following order:

(a) It is hereby declared that sub-sections (2) and (3) of Section 28A of the Bombay Civil Courts Act, 1869 are inconsistent with and repugnant to the provisions of Section 299 of the Indian Succession Act, 1925 and consequently the same stand impliedly repealed. Accordingly, every order made by the District Judge under the Indian Succession Act, 1925 or every order made by a Civil Judge invested with the powers of a District Judge or a District Court, as the case may be, under the Indian Succession Act, 1925 in terms of sub-section (1) of Section 28A of the Bombay Civil Courts Act, 1869 shall be subject to appeal to the High Court in accordance with the provisions of Code of Civil Procedure, 1908, applicable to appeals;

(b) The impugned judgment and order dated 4.11.2008 passed by the learned District Judge, 10 Pune in Civil Appeal No.167 of 2006 is quashed and set aside and the District Judge at Pune is directed to return the appeal memo in said Civil Appeal No.167 of 2006 for presentation to the High Court with a period of 30 days from today;

(c) Upon return of the appeal memo as aforesaid, the Petitioner is at liberty to present the same before the High Court within 30 days, failing which the judgment and order dated 30.1.2006 passed by the Civil Judge, Senior Division in M.C.A. No.32 of 1999 shall stand confirmed;

(d) It is clarified that the judgments and orders passed by District Courts as first Appellate Courts and this Court as second Appellate Court in terms of sub-sections (2) and (3) of Section 28A of the Bombay Civil Courts Act, 1869, upto the date of this judgment and order shall be regarded as valid, notwithstanding the reasoning and declaration contained in this judgment and order by applying the principle akin to de facto doctrine. However, where such judgment and orders have already been challenged on the ground of inconsistency or implied repeal of the provisions contained in Section 28A(2) and (3) of Bombay City Civil Courts Act, 1865, and such proceedings are pending adjudication, then they shall not be governed by the principles of akin to de facto doctrine.

(e) Rule is, accordingly, made absolute in aforesaid terms;

(f) In the facts and circumstances of the present case there shall be no order as to costs."

4. It is, however, contended by the learned counsel for respondent, that since the matter has been pending from 1997 and that evidence has been led in the matter, the matter pending before Civil Judge Senior Division, Dhule be transferred to District Judge, Dhule having regard to declaration as appearing in paragraph No. 50 of the decision of division bench as it is and that the District Judge shall continue with the same from the point at which the proceedings have reached before the Civil Judge, Senior Division's court, while this order is being passed. The request appears to be reasonable. Learned counsel for petitioners also fair enough and on instructions states that the matter be accordingly considered.

5. In view of aforesaid, order dated 18-02-2013 on Exhibit-138 in the proceedings pending before the Civil Judge Senior Division, Dhule bearing Probate and Letter of Administration Application/ Miscellaneous Application No. 86 of 1997. The proceedings pending before the civil judge, senior division, Dhule bearing Probate and Letter of Administration Application/Miscellaneous Civil Application No. 86 of 1997 shall stand transferred to District Judge at Dhule for its onward continuation in accordance with law.

6. Writ Petition, as such, stands allowed in terms of prayer clause "C" and disposed of. Rule made absolute accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK
