

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

CIVIL REVISION APPLICATION NO.96 OF 2014

Smt. Vijaya w/o Balasaheb Deshmukh,
Age 42 years, Occ. Household,
r/o Kousadi, Taluka Jintur,
District Parbhani, at present residing at:-
Chikhali Sarnike, Taluka Risod,
District Washim ... APPLICANT

VERSUS

Smt. Sandhya w/o Ravindra Deshmukh,
Age 41 years, Occ. Agri. & Household,
R/o Kausadi, Taluka Jintur,
District Parbhani ... RESPONDENT

.....
Shri V.B. Anjanwatikar, Advocate holding for
Shri A.V. Hon, Advocate for applicant
Shri Shrikant S. Kulkarni, Advocate for respondent
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CORAM: A.I.S. CHEEMA, J.

DATED: 17th March, 2015.

Date of reserving judgment : 2/3/2015
Date of pronouncing judgment : 17/3/2015

JUDGMENT :

1. The applicant had filed Misc. Application
No.86/2012 before the Civil Judge, Senior Division, Parbhani
as per Bombay Regulation VIII, 1827, claiming heirship
certificate of deceased Balasaheb Narayan Deshmukh, who

expired on 28.3.2009. The applicant claimed that Balasaheb was permanent resident of village Kausadi and was working at Pune. She claimed to be the wife of Balasaheb. The application claimed that, Balasaheb expired at Kausadi. She gave schedule of property as Gat No.107, situated within limits of Zilla Parishad, Parbhani.

2. There was no respondent arrayed to the application. The trial Court gave public notice of the application. In response, respondent filed objection claiming that, at the time of death, Balasaheb was residing at Pune and public notice in the newspaper of Pune was not given. Balasaheb was married to one Rani, from which marriage he has two children Nikhil and Chhotu, who are residing at Pune. Respondent claimed that the applicant suppressed this fact. She claimed that, the applicant further suppressed the fact that the mother of deceased Balasaheb was also alive and that regarding the property concerned, there was no partition, which can be seen from the 7/12 extract. Thus, she objected to the grant of heirship certificate.

3. In the trial Court, evidence was brought on record and trial Court found that, the applicant Vijaya and Indubai, the mother of deceased Balasaheb were the legal

representatives of Balasaheb. It found that it had jurisdiction to deal with the matter and the heirship certificate was required to be issued in the name of applicant and Indubai. The trial Court recorded reasons and ordered issue of heirship certificate.

4. The respondent Sandhya Deshmukh filed Misc. Civil Appeal No.69/2012 to the Principal District Judge, objecting to the grant of heirship certificate. The District Judge heard the arguments and discussed the evidence and submissions made before him and allowed the appeal and set aside the judgment of the trial Court. The judgment of the Principal District Judge is now impugned before this Court.

5. I have heard counsel for both sides. Counsel for applicant submitted that the judgment of the trial Court was correct and District Judge has wrongly set aside the judgment of the trial Court. According to him, the trial Court issued the heirship certificate to applicant along with the mother of deceased Balasaheb, to which the applicant had no difficulty. His submission is that, the heirship certificate will only give right to administer the property. It has been argued that, the impugned judgment of the District Judge needs to be set aside.

6. Against this, the counsel for respondent submitted that the District Judge has rightly considered all the necessary evidence. District Judge found that the applicant suppressed material facts regarding where death of Balasaheb took place and had submitted doubtful certificate that he died at Kausadi. According to him, the applicant did not even know where Balasaheb was residing at Pune or if he was married to Rani. According to the counsel, Balasaheb was admittedly working at Pune and his wife Rani and children are residing there and in that area there has been no publication. The counsel submitted, the respondent had filed objections before the trial Court and it was a disputed matter. Even the property concerned was not partitioned. Counsel submitted that the applicant has filed another suit under Section 6 of Specific Relief Act having No.110/2010 before Civil Judge, Junior Division, Jintur and she had claimed in the suit that this property concerned went to Balasaheb in family arrangement. The suit is against present respondent and others. According to him, in such situation, the trial Court could not have granted heirship certificate to the applicant. According to him, the matter being disputed, the applicant should have been asked to file regular suit and it could not have been dealt as summary matter. The counsel submitted that, the

District Judge rightly considered that suit was required to be filed and has rightly set aside the order of the trial Court.

7. Point for consideration is :-

Whether the impugned judgment and order of the Principal District Judge is illegal or suffers from material irregularity ?

8. The District Judge considered the fact that the trial Court had only a Misc. Application before it, in which summary enquiry was being held. District Judge observed that, not impleading Indubai, the mother of Balasaheb, who was admittedly alive, was material irregularity, which went to the root of the matter. District Judge discussed the evidence and record that Gat No.107 was ancestral property, regarding which the applicant herself had filed suit before the Court at Jintur. In evidence, applicant admitted that, Balasaheb died at Pune, but in application she had claimed that he died at Kausadi and had even produced death certificate from Grampanchayat, Kausadi. The evidence was considered that the applicant did not know as to where and at what place deceased Balasaheb died at Pune nor she was knowing where he was residing at Pune or whether he had a wife called Rani. Discussing such evidence, the District Judge found that, the

trial Court should not have exercised jurisdiction to issue certificate and that when in any application for heirship under The Regulations, complicated questions of fact and law arise, the parties should be directed to file Regular Civil Suit for fullfledged trial instead of granting or refusing certificate under the regulation. For such reasons, the District Judge set aside the order of the trial Court.

9. Going through the material available, it is quite clear that the applicant who had moved the trial Court, did not put on record complete facts and was claiming heirship certificate. The respondent who was defending another suit by the applicant for possession, under the Specific Relief Act, had raised objections to the grant of heirship certificate. Rule 4 of The Bombay Regulations is as follows :

“4. First : Objection appearing to be examined and recognition given or refused accordingly :

If, before the expiration of the time, any objection is made to the right of the person claiming as heir, executor or administrator, the Judge, on a day to be fixed (of which at least eight days' previous notice shall be given to the parties), shall summarily investigate the grounds of the objections on the one hand, and of the right claimed on the other, examining such witnesses or other evidence as may be adduced by the parties, and either grant or refuse a certificate, as the circumstances of the case may require.

Second : If question is complicated or difficult, matter to be left for adjudication:

But if from the evidence adduced, it appears that the question at issue between the parties is of a complicated or difficult nature, the Judge may suspend proceedings in the application for a certificate until the question has been tried by a regular suit instituted by one of the parties."

10. It is apparent that, looking to the disputes raised, the trial Court could not have proceeded to issue heirship certificate under The Bombay Regulations and parties should have been left to file regular suit to settle their disputes. In this view of the matter, no fault can be found with the judgment of the District Judge. It cannot be said that the impugned judgment is illegal or suffers from material irregularity.

11. There is no substance in the revision application. The same is rejected.

(A.I.S. CHEEMA, J.)