

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

CRA NO. 205 OF 2013
WITH MCA/16/2012

REKHA MANOJKUMAR CHAVAN
VERSUS
KASTURIBAI INDERSINGH CHAVAN, L.RS. PREMSINGH AND OTHERS

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Advocate for Petitioner : Kedar Balbhim R.
Advocate for Respondents : Mr. A.B.Dhongade, For R/1A to 1E
Adv. Mr.Kasliwal Ajit D. For R/5

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CORAM : S.V.GANGAPURWALA,J.

DATED : 12TH OCTOBER, 2015

ORDER :-

Kasturibai w/o Indersingh Chavan had filed application for grant of Succession Certificate with regard to the retiral benefits of deceased Manojkumar being mother of the deceased Manojkumar. During pendency of the said proceeding, Kasturibai died. The present respondents filed application for bringing themselves as legal heirs of the deceased Kasturibai for prosecuting the said application for grant of Succession Certificate. The said application is allowed. Aggrieved thereby, the present Revision.

2] Mr.Kedar, learned counsel for petitioner submits that the petitioner is the widow of deceased Manojkumar. Kasturibai was the mother of the deceased Manojkumar. As far as deceased Manojkumar is concerned, it is only present petitioner and Kasturibai who are the Class-I heirs. The application was for grant of Succession Certificate qua the retiral benefits of the deceased

Manojkumar. On death of deceased Kasturibai, the present petitioner is the only legal heir of deceased Manojkumar. The legal heirs that is present respondents brought on record as legal heirs of Kasturibai are not Class-I legal heirs of deceased Manojkumar. As such they are not having any right to continue with the proceeding on the death of deceased Kasturibai. The cause to sue for the Succession Certificate for the retiral benefits of deceased Manojkumar does not survive. According to the learned counsel, application has been erroneously decided by the Court.

3] Mr.Dhongade, learned counsel for respondents 1-A to 1-E submits that respondents 1-A to 1-E are legal heirs of deceased Kasturibai. This Court had directed the trial Court to decide the application for legal heirs in light of Order 22 Rule 5 of CPC. The present respondents 1-A to 1-E are only competent to continue with the proceedings as legal heirs of the deceased even by applying Section 2(11) of CPC. According to the learned counsel, the right to sue survives and as such said proceedings are being properly prosecuted and the application has been rightly decided. According to learned counsel respondents 1-A to 1-E are the Class-I heirs of deceased Kasturibai as such, have right to prosecute the same. The present application for bringing on record legal representatives is decided only for the purpose of continuation of the proceeding as such no interference is called for.

4] With the assistance of learned counsel, I have gone through the order. It is not disputed that the deceased Kasturibai had initiated proceeding for grant of Succession Certificate vis-a-vis retiral benefits of deceased Manojkumar. The relationship between the parties is not disputed. Kasturibai is the mother of deceased Manojkumar and present petitioner Smt.Rekha is the widow of

deceased Manojkumar. Both certainly are the Class-I heirs. As far as retiral benefits are concerned, same would be governed by Service Law as applicable. In the present matter, rights of the present respondents 1-A to 1-E are to be considered. Respondents 1-A to 1-E certainly cannot claim any right in the estate of deceased Manojkumar, more particularly when the widow of deceased Manojkumar is alive. Present petitioner is the widow of deceased Manojkumar. Right to sue would come to an end on the death of deceased Kasturibai. Even as per Order 22 Rule 4 of the CPC, right to sue would not survive and on the death of Kasturibai, the proceeding would stand abated. Considering the nature of the claim made it cannot be said that respondents 1-A to 1-E would be entitled to prosecute the cause which was initiated by Kasturibai. Considering the factual matrix of the present case more particularly rights in the retiral benefits of the deceased Manojkumar in wake of the present petitioner being alive.

5] The Court while allowing the application has only considered that these respondents 1-A to 1-E are legal heirs of Kasturibai, however, has failed to consider as to how they have got any right, title or authority to continue the proceeding for the grant of Succession Certificate qua retiral benefits as successors of deceased Manojkumar. In fact the same would be required to be considered. The Court has absolutely not applied its mind as to whether the right to sue Succession on the death of deceased Kasturibai.

6] The discussion made above would be sufficient to conclude that the right to sue did not survive on the death of deceased Kasturibai with regard to the proceeding in question. In light of above, Revision is allowed. The order dated 20/7/13 passed below

Exh.66 in Misc.RJE No.279/2010 is quashed and set aside and application Exh.66 stands rejected.

[S.V.GANGAPURWALA,J.]

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