

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10504 OF 2014

MANGALA BABURAO DEVKAR AND ANOTHER
VERSUS
RAIBHAN YADAV DEVKAR AND OTHERS

...
Advocate for Petitioners : Shri Lakhotiya Pawan K.
Advocate for Respondents 1 & 2 : Shri Kasliwal Ajit D.
Advocate for Respondent 3 : Shri Katneshwarkar S.P.

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: March 04, 2015

...

PER COURT :-

1. Contention of the petitioners is that petitioner No.1 was initially staying at Wadod, Taluka Khultabad, during the subsistence of her marriage with Baburao. It is stated that husband Baburao has gone missing and since he was not traced for the past about eight years, he was presumed dead and his case was, therefore, considered to fall in "Civil Death". The petitioner No.1 has a minor son. Her father-in-law Ramchandra has also passed away.

2. The petitioners have obtained heirship certificate from the learned Civil Judge (S.D.), Aurangabad. The respondents 1 and 2 herein have moved for revocation of the heirship certificate and the said proceedings are also pending before the competent court at Aurangabad.

3. It is stated that on account of property disputes, the petitioner, who was rendered alone in the above backdrop, was being threatened with physical harm. Since she apprehended a threat to her physical existence,

she has filed complaints with the concerned police station as against the respondents.

4. RCS No.87 of 2012 has been initiated by the respondents 1 and 2, before the learned Civil Judge (J.D.), Khultabad. The said matter, instituted in 2012, is now at the stage of recording of oral evidence of the plaintiffs. The concerned plaintiffs attend the proceedings at Aurangabad with regard the revocation of heirship certificate.

5. The petitioners submit that on account of the circumstances narrated above, she has moved away from village Wadod, Tq. Khultabad to village Warzadi, Taluka and District Aurangabad. In order to attend the proceedings in RCS No.87 of 2012, she has to travel from Warzadi to Cidco Bus Stand, Aurangabad, from where, she is required to travel to the Main Bus Stand, Aurangabad and then she can board a Bus to travel to Khultabad. In the light of the threats held out to her, she is required to be accompanied by her brother or a close relative on every occasion while travelling to Khultabad.

6. The petitioners submit that in the light of the above fact situation, an application MARJI No.234 of 2014 was filed by the petitioners before the learned Principal District Judge, Aurangabad seeking transfer of the proceedings in RCS No.87 of 2012 to Aurangabad. The revocation of heirship certificate proceedings as well as RCS No.87 of 2012 could be adjudicated upon at Aurangabad. Since, this becomes a mid-point for both the parties,

she has prayed for transferring the said suit from Khultabad to Aurangabad, by which, she could reach Aurangabad by a single journey as like the respondents herein.

7. The said application MARJI No.234 of 2014 has been rejected by the learned Principal District Judge by the impugned order dated 28.8.2014.

8. The contention, therefore, is that no prejudice would be caused to the respondents as it can travel to Aurangabad for both proceedings. Per contra, petitioner No.1 has to travel to Aurangabad for revocation of heirship certificate matter and is also required to travel to Khultabad in RCS No. 87 of 2012. Grave in-convenience and hardships are manifest so far as the petitioner No.1 is concerned. No hardships would be caused to the respondents since they already travel to Aurangabad for the other proceedings and it would not be of much in-convenience, if RCS No.87 of 2012 is transferred to Aurangabad.

9. Shri Kasliwal, learned Advocate appearing on behalf of respondents 1 and 2 opposes the petition on the ground that the application for transfer could have been made promptly after the institution of the proceedings at Khultabad. The story of threats is mis-conceived and the petitioner No.1 has filed false complaints against the said respondents. Petitioner No.1 herself has shifted from Wadod to Warzadi and as such, she cannot now complain about inconvenience.

10. It is further submitted that convenience cannot be a ground for transferring the proceedings. Recording of evidence has commenced and as such, the said suit would be decided within a short time. Shri Kasliwal has therefore, vehemently, opposed the prayers made by the petitioners.

11. Shri Katneshwarkar, learned Advocate appearing on behalf of respondent No.3 submits that he is a paralytic patient residing at Aurangabad. He is defendant No.3 in RCS No.87 of 2012. He finds it extremely difficult to travel to Khultabad for participating in the said proceedings. He, therefore, supports the petitioners in their request for transfer of RCS No.87 of 2012 to Aurangabad.

12. I have considered the submissions of the learned Advocates for the respective sides as recorded above, with due circumspection. It is not in dispute that the petitioner No.1 has lost her husband as well as her father-in-law. On account of certain circumstances, she was required to leave Wadod and reside with her brother at Warzadi. She has a minor child. Transfer of proceedings is not being sought on account of any other reason, but, in the specific circumstances surrounding the petitioners as recorded above.

13. In my view, if the convenience of the litigating sides is to be seen, which seems to be the only issue involved, the petitioner No.1, who is a lady, having a minor child, is required to take a circuitous route from Warzadi to reach the court at Khultabad. Being a lady and a widow, her

brother is required to accompany her. Complaints as regards physical threats held out to her are registered with the concerned police station at Khultabad. So also, respondent No.3 who is the third defendant in the proceedings at Khultabad, is also a paralytic patient residing at Aurangabad.

14. Taking an over all view, in the peculiar facts and circumstances of this case, I do not find that the impugned order dated 28.8.2014, would do justice to the litigating sides. The reasons assigned by the learned District Judge would not result in meeting the ends of justice. In these peculiar facts of this case, a lady litigant needs to be protected.

15. In the light of the above, the impugned order is quashed and set aside. RCS No.87 of 2012 shall stand transferred to the appropriate Court at Aurangabad. The Principal District Judge, Aurangabad shall issue necessary directions in this regard and allot RCS No.87 of 2012 to the court of competent jurisdiction at Aurangabad. Needless to state, the said proceedings shall progress from the stage at which they stand presently before the Court at Khultabad.

16. The Writ Petition is accordingly allowed. No order as to costs.

(RAVINDRA V. GHUGE, J.)

...