

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.311 OF 2014

Smt.Eugenia Rana ... Appellant

Vs.

Smt.Hirabai Hiralal Rana
since deceased through heirs & Ors. ... Respondents

Mr.P.M. Arjunwadkar for the Appellant
Mr.Ralston Fernandes for Respondent Nos.1(E) and 7
Dr.B.M. Rana, Resp. No.33 – present in person

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **1st DECEMBER, 2015**

P.C.:

1. This appeal is filed against the order dated 15.11.2013 passed by the learned C.J.S.D., Daman allowing the application filed by the appellant wherein it was declared that Mr.Lalchand is not born in Daman. This order is in fact in favour of the appellant. The latter portion of the order by which the learned Judge has stated that in view of the pendency of the First Appeal (Agravo) in the High Court, the proceedings are kept in abeyance, is under challenge.

2. Mr.Arjunwadkar, the learned Counsel appearing for the appellant, has submitted that this order of keeping the proceedings in abeyance till the First Appeal is decided by the High Court is challenged. He submitted

that the appellant is aggrieved and the appellant wants the proceedings should be tried by the trial Court irrespective of the pendency of the first appeal.

3. The appellant is a daughter in law of Lalchand and respondent No.33 is a husband of the appellant. The other respondents are the children and grand children of Lalchand. Lalchand died after executing a will for which testamentary proceedings were taken out. The daughter in law of Lalchand has taken a stand that Lalchand was not born in Daman and the testamentary proceedings cannot be covered under Portuguese law but Civil Procedure Code and Indian law is applicable. The learned Counsel has submitted that earlier the appellant has filed an appeal before this Court on the same issue and by order dated 25.7.2006 in Appeal from order No.194 of 1994, this Court had directed the trial Court to consider the facts and decide the said issue. The learned Counsel submitted that once this Court has directed the trial Court to decide the issue and the trial Court has accordingly decided the issue that he was not born in Daman, there was no necessity for the trial Court to wait for the decision in the first appeal which is pending before this Court.

4. It is submitted by the learned Counsel for the respondent Nos.1 and 2 that it is not maintainable and there is no challenge to any order as such.

5. Respondent No.33, the husband of the appellant is present and appeared in person. He submitted that he has filed the first appeal, which is pending before the High Court.

6. Considering the submissions and the order passed therein and the proceedings initiated by the parties against each other, it appears that the question whether the testamentary proceedings are covered by Portuguese law or not is the main issue. Though this Court has by earlier order directed the trial Court to decide the matter, Respondent No.33 has filed a separate proceedings and the First Appeal is pending before this Court. In the said appeal, the issue whether Portuguese law is applicable or not will be required to be discussed. At this stage, it cannot be said what approach this Court will take in deciding that first appeal, though by the earlier order, this Court had directed the trial Court to decide the issue on facts. The order of the learned trial Judge of keeping the proceedings in abeyance, cannot be faulted out that the decision of the first appeal may have bearing over the main issue.

7. In view of this, the appeal is dismissed.

(MRIDULA BHATKAR, J.)