

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.341 OF 2015

Shri Anilkumar Krushnan Pillai		Applicant
	Vs	
Shri Nathan Harik Swami		.. Respondent

Mr. Nilesh M. Wable, Advocate for Applicant.

CORAM : R.G.KETKAR,J.
DATE : 11/08/2015

PC:

1. Heard Mr. Nilesh Wable, learned counsel for the applicant, at length.
2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant has challenged the Judgment and order dated 23.1.2015 passed by learned District Judge-4, Pune in Civil Appeal No.736 of 2010. By that order, the learned District Judge allowed the Appeal and set aside the Judgment and order dated 20.7.2010 passed by the learned Jt. Civil Judge, Sr. Dn., Pune in Misc. Application No.297 of 2010. The learned District Judge remanded the matter to the trial Court and the trial Court is directed to consider grant of succession certificate by allowing both the parties to lead evidence and thereafter pass appropriate orders in accordance with law.
3. In support of this application, Mr. Wable strenuously contended that the applicant instituted application under section 372 of the Indian Succession Act, 1925 (for short, 'Act') for grant

of succession certificate. The applicant is son of deceased Radhadevi Krishnan Pillai. Radhadevi expired on 25.12.2009 leaving behind applicant as her sole heir. After filing of the application, the applicant filed documents at Exh.12 as also affidavit at Exh.10. The citation and public notice was issued. It was published in Daily Prabhat on 24.4.2010. However, nobody raised any objection for issuance of succession certificate in the name of the applicant. By order dated 20.7.2010, learned trial Judge allowed the application and issued succession certificate in the name of the applicant as a legal heir of deceased Radhadevi, on payment of requisite court fee.

4. He submitted that the respondent has two options either to apply for revocation of the succession certificate or to file a substantive appeal. The respondent preferred Civil Appeal no. 736 of 2010. During pendency of that Appeal, he took out application Exhibit 11 seeking direction to the applicant to deposit amount which he had obtained on the basis of the succession certificate. The respondent also filed application Exh.14 for permission to lead additional evidence. By order dated 21.9.2013, the learned District Judge dismissed both the applications. However, by the impugned order, the learned District Judge set aside the trial Court's order and remitted the matter to the trial Court. The learned District Judge also permitted parties to lead evidence. He submitted that after the

learned District Judge rejected the application Exh.14 for leading additional evidence, by passing the impugned order the learned District Judge has permitted the respondent to lead evidence. In view of the order rejecting the application below Exh.14, the learned District Judge was not justified in remanding the matter and permitting the parties to lead evidence. This amounts to filling up lacunae by the respondent. He submitted that the respondent ought to have initiated proceedings for revocation of the succession certificate and not the Appeal. He further submitted that in the Appeal Memo and application for leave to appeal, the respondent made bald statement that he is real brother of deceased Radhadevi. In short, the respondent did not substantiate his relationship with deceased Radhadevi. In support of this submission, he relied upon following decisions:

- (i) *Vaijantabai Devidas Khandare Vs. Janardhan Fakirchand Khandare*, 2007 (5) All MR 731 to contend that though inquiry for issuing succession certificate is of a summary nature, there has to be some material in support of the claim of the respondent.
- (ii) *Zarina @ Taushida latif Qureshi Vs. Dilip Modji Donakia*, 2013 (1) All MR 210 to contend that as the respondent has not established his relationship with deceased Radhadevi, he has no locus to challenge the order.

5. I have considered the submissions advanced by Mr. Wable. I have also perused the material on record. As noted earlier, the

applicant has filed application under section 372 of the Act for grant of succession certificate on the premise that he is the son of deceased Radhadevi. Radhadevi expired on 25.12.2009 leaving behind him as only heir and legal representative. By order dated 20.7.2010, the learned trial Judge allowed the application. In paragraph 3 of the order, the learned trial Judge noted that citation and public notice was issued. It was published in Daily Prabhat on 24.4.2010. Nobody raised any objection for issuance of succession certificate in the name of the applicant. The learned trial Judge after considering the evidence of applicant at Exh.8 which was nothing but the replica of the material averments in the application as also photocopy of passport, death certificate of Radhadevi and copy of ration card and statement of accounts, allowed the application and issued succession certificate.

6. Respondent filed application for leave to Appeal. In paragraph 1, he claims that he has legal right to apply for succession certificate as he is the real brother of deceased Radhadevi. She had no issue. She had no heir from her husband. The applicant herein has no right to file application for grant of succession certificate or any other application related to deceased Radhadevi in respect of her property.

7. During the pendency of the Appeal, the respondent filed application Exh.11 seeking direction against the applicant to

deposit the amount which he had obtained on the basis of succession certificate. The respondent also filed application Exh.14 for leading additional evidence. The applicant resisted both the applications by filing replies Exhibits 13 and 14 respectively.

8. Learned District Judge rejected the applications by order dated 21.9.2013. The learned District Judge was of the view that in proceedings under section 383 of the Act for revocation of succession certificate, the respondent could lawfully lead evidence. The respondent, however, did not resort to remedy of revocation of succession certificate. He had preferred Appeal against the trial Court's order. The learned District Judge referred the decision of the Apex Court in the case of K.R.Mohan Reddy Vs. M/s Net Work Inc, AIR 2008 Supreme Court 579 and observed that since there was no evidence before the trial Court, there is no question to allow leading of additional evidence in the Appeal. The respondent cannot be permitted to convert Appeal in a proceeding for revocation of succession certificate and be permitted to lead evidence before the Appellate Court.

9. As far as the impugned order is concerned, the learned District Judge observed in paragraph 12 that no evidence is adduced to establish the relationship. The relationship between the deceased Radhadevi and the respondent is averred in paragraph 1 of Appeal Memo as well as ground G of the Appeal

as well as in the affidavit. Question of proving relationship will arise in the trial. The respondent did not file application for revocation. The respondent though filed application for leading additional evidence, the same was rejected by the Court and, therefore, he is not in a position to lead evidence and establish the relationship with deceased Radhadevi. Not allowing the respondent to lead additional evidence and at the same time rejecting his appeal on the ground that he has not established relationship with deceased Radhadevi, is not at all justifiable. Opportunity will have to be given to the respondent to lead evidence.

10. In paragraph 13, the learned District Judge observed that the respondent has challenged the very status of the applicant as a son of the deceased Radhadevi. The respondent also claims that he is a real brother of Radhadevi who died issueless. While granting succession certificate, the learned trial Judge did not consider whether Radhadevi was issueless and whether the applicant is the son of Radhadevi. Those questions were not before the learned trial Judge as the proceedings were uncontested.

11. After considering the submissions advanced by Mr. Wable and for the reasons stated in paragraphs 12 and 13 of the impugned order, I do not find that the learned District Judge has committed any error in remitting the matter to the trial Court

after setting aside trial Court's order.

12. Mr. Wable relied upon the decision of this Court in the case of Vaijantabai (supra) to contend that though inquiry for issuing succession certificate is of a summary nature, there has to be some material in support of the respondent's claim that he is real brother of deceased Radhadevi. In fact, precisely, for that reason, the learned District Judge remitted the matter to the trial Court so as to enable the parties to establish their relationship with Radhadevi. In the case of Zarina @ Latif Qureshi (supra), this Court held that as the relationship of the petitioner with the deceased was not established, he has no locus to challenge the order. For the reasons already indicated, I do not find that the decisions relied by Mr Wable advance the case of the applicant. The learned District Judge has remitted the matter so as to give opportunity to both sides to lead evidence to establish their relationship with deceased Radhadevi. Understood thus, I do not find that the learned District Judge committed any error in passing the impugned order. Hence, Application fails and the same is dismissed. It is needless to observe that the learned trial Judge will decide the application on the basis of evidence on record and in accordance with law uninfluenced by the observations made herein. Order accordingly.

(R.G.KETKAR, J.)