

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8521 OF 2005

Bhalchandra Vinayak Joshi & Ors. .. Petitioners
vs.
Dhirottama Vivek Joshi .. Respondent

Ms P. Naphade with A. Pawar i/b. Divekar & Co. for Petitioners.
Mr. D. Patil h/f. Mr. G. S. Godbole for Respondent.

CORAM : M. S. SONAK, J.
DATE: 30 MARCH 2015

P.C. :-

1] This writ petition challenges the orders dated 27 June 2005, which in effect, have disposed of the petitioners application under Regulation 7 of The Bombay Regulation Act 1827 (said Regulations) seeking *inter alia* annulment of heirship certificate issued in favour of the respondent.

2] If the impugned orders are perused, it is seen that the learned Civil Judge, Senior Division, Pune, has proceeded on the basis that the heirship certificate which was issued, was in fact a succession certificate under Section 8 of the Indian Succession Act, 1925. In the light of such conclusion, the learned Civil Judge has held that the provisions contained in Regulation 7 of the said Act are not attracted and consequently the petitioner's application under Regulation 7 of the said Regulations was not maintainable.

3] Section 8 of Indian Succession Act 1925, does not deal with the issue of succession certificate. The application made by the respondents, on basis of which the heirship certificate was issued, also does not make any reference to Indian Succession Act, 1925, but rather makes reference to the Bombay Regulation Act, 1827.

4] In light of the aforesaid, it does appear that the learned Civil Judge has proceeded to dismiss the petitioners' application seeking annulment of the heirship certificate with haste and without examining the respective contentions raised by either of the parties.

5] Mr. Patil, the learned counsel for the respondents submitted that since the petitioners allege fraud, there was no question of applying for annulment, since prior to the issuance of the heirship certificate, the summary procedure prescribed had been complied. Mr. Patil further submitted that the Court of Civil judge, Senior Division is not the Zilla Court. Finally, Mr. Patil submitted that in terms of Section 390 of the Indian Succession Act, 1925, notwithstanding anything contained in the Bombay Regulations Act, 1827, the provisions of Sections 370(2), 372(1)(f) and Sections 374 to 379, 381, 383, 384, 387, 388 and 389 with respect to certificates under Part X and applications therefor, and of Section

317 with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as have can be made applicable, apply, respectively, to certificates granted under that Regulation and applications made for certificates thereunder, after the 1st day of May 1889, and to the exhibition of inventories and accounts by the holders of said certificates so granted. Mr. Patil submitted that in the light of these provisions, no fault can be attributed to the learned Civil Judge in making the impugned orders.

6] At this stage, it is not necessary to adjudicate any of the rival contentions raised by the parties. In fact, the Civil Judge, ought to have considered the rival contentions, rather than proceed on the basis that heirship certificate was a certificate issued under Section 8 of the Indian Succession Act, 1925. The impugned orders have to be set aside, on the ground that they are vitiated by non application of mind and for failure on the part of the learned Civil Judge to consider the rival contentions of the parties as also the law on the subject.

7] Accordingly, the impugned orders are set aside. The matter is restored to the Court of 7th Joint Civil Judge, Senior Division, Pune, for fresh consideration.

8] It is made clear that this Court has not examined the merits of the matter or expressed any opinion thereon. Accordingly, it shall be for the learned Civil Judge to consider the rival contentions as also the law on the subject and to decide the petitioners application afresh.

9] The learned Civil Judge is requested to decide the matter as expeditiously as possible and in any case within a period of six months from today.

10] The petitioner to appear before the learned Civil Judge on 15 April 2015 and produce an authenticated copy of this order. The learned Civil judge to issue notices to the respondents and thereafter proceed with the matter in accordance with law.

11] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

12] All parties to act on basis of an authenticated copy of this order.

(M. S. SONAK, J.)