

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

**FIRST APPEAL NO. 1150 OF 2015
WITH
CIVIL APPLICATION NO. 4995 OF 2015**

Vinay @ Swapnil Sadanand Thorat .. Applicant

Versus

Sonubai Jaywant Thorat dead through .. Respondents
LRs. Yashwant Jaywant Thorat & Ors.

Mr.S.S. Chapalgaonkar, Advocate for the applicant.
Mr.P.C. Mayure, Advocate for R-3.
Mr.M.M. Joshi h/f. Mr. S.B. Ghute, Advocate for R-7.

CORAM : A.V.NIRGUDE, J
RESERVED ON : 23.09.2016
PRONOUNCED ON : 27.09.2016

O R D E R :-

1. Heard. Admit. This appeal challenges judgment and order dated 21st February, 2015, passed by the learned Civil Judge, Senior Division, Kopargaon in Succession Misc. Application No.14 of 2008, in which the appellant was the applicant and the respondents were opponents. The parties to this first appeal would be described as per their designation in the lower Court.

2. The facts leading to this litigation, in short, can be stated as under :-

3. The applicant's father Sadanand Jaywant Thorat died at Kopargaon on 31.01.2008 apparently leaving behind several legal heirs, namely, his mother – Sonubai, first wife – Madhuri, his son the applicant, his children Vaibhav, Gayatri and Akshada from his second wife Latabai and Latabai – his second wife. Sadanand was working as a Clerk in Bank of India, Kopargaon Branch. He was yet to receive his provident fund, gratuity and his pensionary benefits. Few days prior to Sadanand's death, Sadanand had retired from his service. Sadanand had nominated his second wife Latabai as his nominee for provident fund and for family pension etc. After Sadanand's death, his second wife Latabai approached the bank and without much difficulty, could get an amount of Rs.1 lakh as provident fund of Sadanand. She also started getting family pension. The amount of gratuity remained to be disbursed. The applicant, who is son from his first wife Madhuri,

moved this application for getting succession certificate.

4. The applicant alleged that Latabai was not legally wedded wife of his father – Sadanand. He also alleged that children of Sadanand and Latabai are illegitimate children. He asserted that prima facie he is one of the legal heirs of Sadanand and should be given the Succession Certificate. Sadanand's mother appeared and supported the application. On the other hand Latabai and her children opposed the application. The learned Judge, in view of this controversy recorded evidence of the parties and held that the applicant, other three children of Sadanand and Latabai have equal share in the amount payable to Sadanand as gratuity. The learned Judge of the Lower Court believed the contention of Latabai that she was legally wedded wife of Sadanand etc.

5. There is a specific provision in Section 373 of the Indian Succession Act about the procedure that is

required to be followed before issuing the Succession Certificate. Said Section 373 of the Indian Succession Act is as under :-

"373. Procedure on application -

(1) If the District Judge is satisfied that there is ground for entertaining the application, he shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing -

(a) to be served on any person to whom, in the opinion of the Judge, special notice of the application should be given, and

(b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Judge, subject to any rules made by the High Court in this behalf, thinks fit,

(2) When the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him.

(3) If the Judge cannot decide the right to the certificate without determining question of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant, if he appears to be the person having prima facie the best title thereto.

(4) When there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants."

6. Having perused the provisions quoted above, it becomes clear that the Court is supposed to follow the

procedure as contemplated either by sub-section (3) or sub-section (4) of Section 373 of the Indian Succession Act. The learned Judge followed the procedure as contemplated by sub-section (4) of section 373 of the Indian Succession Act and arrived at a conclusion that the applicant and other four persons, namely, step siblings and step mother are legally heirs of Sadanand. The learned Counsel appearing for the appellant challenged this finding.

7. The question that arises for my consideration in the facts and pleadings of this case is – which option was available and suitable for the learned Judge? In my view, the learned Judge ought to have followed the provision of sub-section (3) of Section 373 of the Indian Succession Act and ought to have issued certificate to the person having prima facie best title. The facts narrated above clearly indicate that the applicant was controverted the legal heir of Sadanand. On the other hand, the claim of other four legal heirs was in dispute.

During the pendency of application, Sonubai – mother of Sadanand died. So, her legal heirs were also entitled to claim share in Sadanand's property, which would have fallen to Sonubai's share. It has come in evidence that besides cash amount to which Sadanand was entitled, Sadanand also owned a flat at Kopargaon. It is also an admitted fact that despite the fact that the applicant was admittedly one of the legal heirs, ignoring his existence disbursed the provident fund amount to opponent No.7. The bank ought to have taken indemnity bond from opponent No.7. If opponent No.7 was nominee for this fund, the bank could not have assumed that she was the only legal heir and entitled to the amount without her giving an indemnity, stating that she would distribute the amount as per partition of Sadanand's estate between his legal heirs. As regards family pension, if Sadanand had nominated opponent No.7 as his legal heir, other legal heirs were not entitled to this pensionary benefit which was meant only for the spouse and minor children of the deceased. In addition to this the amount of gratuity

and other assets left behind by Sadanand are required to be distributed amongst legal heirs. In other words, the situation was exactly as contemplated by sub-section (3) of Section 373 of the Indian Succession Act.

8. Firstly, besides the amount of provident fund and gratuity, there is possibility of existence of few more assets. Secondly, the question as to whether Sadanand was legally married to opponent No.7 is certainly a question that was intricate and difficult for determination in this summary proceeding. In other words, this question ought to have been answered in a Civil suit, which would be filed by one of the parties for partition and separate possession of Sadanand's properties.

9. There is one more aspect of this case. As said above, the bank has already disbursed a sum of Rs.1 lakh to opponent No.7. Apparently, the applicant could have led his claim to this amount also.

10. In view of this, I set aside the impugned order and direct issuance of succession certificate only in the name of the applicant. Such certificate shall be issued in favour of applicant only after he gives an undertaking to the Court that he would retain the amount in his bank account for a period of six months from today, in which time opponent No.7 and other may obtain prohibitory order from Civil Court.

11. The First Appeal is accordingly allowed and disposed of.

12. In view of disposal of First Appeal, connected Civil Application does not survive and disposed of.

[A.V.NIRGUDE, J.]