

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

FIRST APPEAL NO. 1293 OF 2016

PUTALABAI UTTAM MANE AND ANOTHER
VERSUS
ASHA UTTAM MANE AND OTHERS

...
Mr. V.D. Hon, Senior Advocate for Appellants

...
CORAM : P.R. BORA, J.
Dated: November 23, 2016

...

PER COURT :-

1. The appellants have filed the present appeal against the Judgment and order passed by the Civil Judge, Senior Division, Osmanabad on 17th of January, 2007 in Miscellaneous Application No.93 of 2002.

2. The appellants had filed the aforesaid application seeking Succession Certificate. Appellants claim themselves to be legal heirs of deceased Uttam Eknath Mane. Appellant No.1 claims herself to be a widow of deceased Uttam and Appellant No.2 Prasad is stated to be the son of Appellant No.1 Putalabai and deceased Uttam.

3. The application so filed by the present

ASK/-

appellants was objected by the present respondents. According to the respondents deceased Uttam was having no relationship with the appellants and the false claim was raised by the appellants. Appellants and the objectors, both have adduced oral as well as documentary evidence before the trial court in support of their respective conditions. The learned Civil Judge after having assessed the oral and the documentary evidence brought before him rejected the application filed by the present appellants and allowed the objection petition vide the impugned Judgment.

4. Shri. V.D. Hon, the learned Senior Counsel appearing for the appellants assailed the impugned Judgment on various grounds. The learned senior counsel submitted that though, ample evidence was placed on record by the appellants, the Trial Court failed in properly appreciating the same and has erroneously rejected the application filed by the appellants. The learned Senior Counsel, inviting my attention to the documents brought on record by the appellants and more particularly the
ASK/-

school leaving certificate of appellant no.2, the Heirship Certificate, the Ration Card and the official correspondence submitted that the said documents were sufficient to establish that the appellant No.1 was the wife and appellant no.2 was the son of deceased Uttam. The learned Senior Counsel further submitted that the Trial Court has implicitly relied upon the evidence adduced on behalf of the objectors and has on erroneous grounds rejected application of the appellants. The senior counsel therefore prayed for setting aside the impugned Judgment and order and consequently to allow the application filed by the present appellants for grant of succession certificate in their favour.

5. Though, the respondents are duly served none of them has entered appearance in the matter.

6. On perusal of the impugned Judgment and the oral and documentary evidence brought on record before the Trial Court apparently it is revealed that the appellants have failed in proving their relationship with deceased

ASK/-

Uttam Mane. The material on record shows that the appellants had secured the heirship certificate from the Tahasildar, Bhoom but the same was later on revoked / cancelled after an objection was raised to the said certificate by the present respondents. The record further shows that the Tahasildar, Bhoom subsequently issued the heirship certificate in favour of the present respondents. The appellants admittedly did not challenge the cancellation of their heirship certificate by approaching to any higher authority.

7. Though, appellant no.1 Putalabai examined a witness in order to prove that she was the legally wedded wife of deceased Uttam and her marriage with deceased Uttam had taken place in the year 1970, the Trial Court has rejected the said evidence considering the admissions given by the said witness in his cross-examination. The Trial Court has recorded a finding that witnesses Alhad Shinde was a got-up witness and was fully tutored by appellant no.1 Putalabai as about the facts to be deposed before the Court. Though witness by name Pandurang
ASK/-

Wani was examined to prove that deceased Uttam himself had admitted appellant no.2 Prasad in the school and the name of appellant no.2 was recored as Prasad Uttam Mane, the said witness in his cross-examination admitted the he had no knowledge as to who had actually signed the application form for the school admission of appellant no.2 Prasad. The learned Trial Court therefore has rightly rejected the said evidence. As has been observed by the Trial Court though the appellants had produced on record the Ration Card, did not prove the same by examining the necessary witness therefor.

8. The material on record reveals that the objectors however, produced on record ample evidence evidencing that respondent no.1 Ashabai is legally wedded wife of deceased Uttam Mane whereas, respondent no.2 and 3 are the children of deceased Uttam. The material on record shows that in the entire service record of deceased Uttam, respondent No.1 is named as his wife. All nominations are also in the name of respondent no.1 Ashabai. More significantly respondent no.5 Shahapari

ASK/-

w/o. Eknath Mane, who is the mother of deceased Uttam, in her testimony before the Court deposed that respondent no.1 Ashabai is the only wife of her deceased son Uttam and that deceased Uttam was having no relationship with appellant no.1 Putalabai.

9. After having considered the evidence on record it is revealed that the appellants could not prove their relationship with deceased Uttam. In the appeal also no such material has been brought on record by the appellants showing that the Trial Court has recorded any erroneous finding. I, therefore, do not see any reason to cause interference in the impugned Judgment and order. The appeal therefore fails and is accordingly dismissed, however, without any order as to the costs.

(P.R. BORA, J.)

...