

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

911 CIVIL REVISION APPLICATION NO. 301 OF 2015

CHANDRAKANT MAHADU CHAUDHARI
VERSUS
ANIL MAHADU CHAUDHARI AND OTHERS

...

Advocate for Petitioners : Mr. V. J. Dixit, Senior
Advocate, instructed by Mr. Chaudhari Deepak D.
Advocate for Respondent No.1 : Mr. V. D. Hon, Senior
Advocate, instructed by Mr. A. V. Hon
Advocate for Respondents 2 and 7 : Mr. Kishor C. Sant

CORAM : T. V. NALWADE, J

DATE : 28th April, 2016

O R D E R:

1. The proceeding is filed to challenge the order made by learned Civil Judge, Senior Division, Dhule on Exhibit 112 in Probate Application No.6/2012. Probate proceeding was filed by respondent No.1 and in that proceeding, application was moved under the provisions of Order 7 Rules 10 and 11 of the Civil Procedure Code by the applicant for rejection of the proceeding. It was contended that in view of the decision of this Court in Writ Petition No. 2777/2013, reported as **2014 (3) Bom.C.R.641, Nola Jonathan Ranbhise (Smt) Vs. Union of India and others**, the Court of Civil Judge, Senior jurisdiction has no jurisdiction to decide such application. After hearing both the sides, the

application is rejected by the trial Court.

2. Both sides are heard.

3. Learned Senior counsel appearing for the applicant placed reliance heavily on the aforesaid reported case so also on some observations made by this Court, other Hon'ble Judge' in Writ Petition No.1836/2013(Vasantrao Tukaram Shirodkar & others Vs. Sow. Ranjana Chandrakant Sonwane).

4. This court has carefully gone through the ratio laid down by the Hon'le Division Bench in the aforesaid reported case. Ratio can be found in Para 50 of the said decision. It shows that when the matter is decided either by the court of Civil Judge, Senior Division or by the District Court, the appeal against such decision needs to be filed in the High Court. In the said proceeding, jurisdiction of the District Court was challenged where the appeal was filed against the decision of Civil Judge, Senior Division. As the powers of Civil Judge, Senior Division are the powers received due to delegation of powers made under the provisions of Bombay Civil Courts Act, 1869 and the original powers vest with the District Court, the Division Bench

has held that appeal lies to the High Court and not to District Court. It was not laid down that the Court of Civil Judge, Senior Division has no power to decide the contested probate matters. It appears that on the basis of ratio laid down at para 50 of the reported case, in Writ Petition No.1836/2013, same observations are made by other Hon'ble Judge of this Court and the matter which was pending in the Court of Civil Judge, Senior Division was transferred to the District Court.

5. Learned counsel for the respondent has produced copy of the Judge delivered by the other Hon'ble Single Judge of this Court in Civil Revision Application No.8/2014 (Ravindra s/o Mahadu chaudhari & others Vs. Anil s/o Mahadu Chaudhari and others). In that case, though the aforesaid reported case is not referred, relevant provisions and case reported in **AIR 1997 Bombay 419, Mrs. Vera D. Thackeray Vs. Bai Manekbi Annasaheb Thackersey** are referred. It is held that the Civil Judge, Senior Division has the jurisdiction, if the power is delegated to the Civil Judge, Senior Division. This Court has no hesitation to hold that the Civil Judge, Senior Division has jurisdiction in view of the powers delegated to the Court of Civil Judge,

Senior Division. Thus, no error can be found in the order made by the Trial Court. In the result, the revision stands dismissed.

(T. V. NALAWADE, J.)

JPC