

Sequeira

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

SECOND APPEAL No. 696 of 2014

Smt.Anusaya Pandu Koli .. Appellant
Vs.
Subhash @ Ganesh Jotiram Koli & anr. .. Respondents

Mr.Amit Sale a/w Mr.J.Barge, for the Appellant.
None for Respondents.

***CORAM: N.M. JAMDAR, J.
Wednesday, 16 March 2016.***

PC. :

By this Appeal, the Appellant challenges the orders passed by the District Judge, Islampur in Regular Civil Appeal No.43 of 2009 and the order passed by Civil Judge, (Senior Division) in Miscellaneous Application No.9 of 2005 dated 19 January 2009. The proceedings arise from the Application made by the Appellant under Section 372 of the Hindu Succession Act, 1956 for grant of Succession certificate.

2. Heard learned counsel for the Appellant.

3. The succession certificate is sought in respect of movable properties of one Subhadra Hari Mane who is stated to have executed a will and bequeath the property in respect of one Pandu Rama Koli i.e. the husband of the Appellant. The Appellate Court

has noted that said Pandu Kolu had executed a will in favour of his grandson and nephew and a probate is obtained by them and unless the will is held to be invalid no succession certificate can be granted.

4. The learned counsel for the Appellant submitted that the appellate Court has not considered the fact that the Appellant had challenged the order of issuance of probate by way of an Appeal No.980 of 1998 which Appeal is pending and interim order is granted. He submitted that without considering this position, the appellate Judge has foreclosed the right of the Appellant from seeking a succession certificate.

5. Perusal of the impugned judgment and order shows that the appellate Court has not foreclosed the right of the Applicant to make an application for succession certificate but has only stated that unless the appeal proceedings are concluded and will is held invalid, succession certificate cannot be granted in favour of the Appellant. In view of this clear clarification given by the appellate Court which keeps the right of the Appellant open depending on the outcome of the first appeal, neither the apprehension expressed by the learned counsel for the Appellant is warranted nor question of law as urged arises for consideration. The Second appeal is accordingly disposed of, with above clarification.

(N.M.Jamdar, J.)