

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4378 OF 2011

Gopal Eknath Nimbalkar ... Petitioner
Vs.
Vitthal Maruti Nimbalkar (decd.) through LRs
Madhukar Vitthal Nimbalkar and others ... Respondents

Mr. Dilip Bodake for Petitioner.
Mr. Uday Warunjikar for Respondents No.1A, 1B and 3.

CORAM : R. G. KETKAR, J.
DATE : APRIL 04, 2016

P.C. :

Heard Mr. Bodake, learned Counsel for petitioner and Mr. Warunjikar, learned Counsel for respondents No.1A, 1B and 3 at length. Mr. Warunjikar states that within two weeks from today, he will file appearance on behalf of respondent No.2. Rule. Mr. Warunjikar waives service for respondents. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 21.09.2010 passed by the learned Ad-hoc District Judge-2, Solapur in Civil Miscellaneous Appeal No.127 of 2007. By that order, the learned District Judge allowed the Appeal and quashed and set aside the judgment and order dated 30.07.2007 passed by the learned Civil Judge, Senior Division, Barshi in Civil Miscellaneous Application No.9 of 2004.

3. Petitioner has filed application for issuing Heirship Certificate on

the ground that he is the heir of Eknath Yadu Nimbalkar. Eknath died leaving behind the petitioner as the only heir and legal representative. He, therefore, filed application for issuing Heirship Certificate. By order dated 30.07.2007, the learned trial Judge ordered issue of Heirship Certificate. Aggrieved by that decision, respondents preferred Civil Miscellaneous Appeal No.127 of 2007. By the impugned order, the learned District Judge set aside the order dated 30.07.2007. Aggrieved by that decision, petitioner has instituted the present Petition.

4. The learned trial Judge allowed the application on 30.07.2007. Operative part of the order reads thus,

“1. *The application is allowed.*

2. *Applicant Gopal Eknath Nimbalkar is entitled to get Heirship Certificate in his name on depositing requisite court fees. **He is entitled to inherit land gat Nos.78, 84 and 87 of deceased Eknath Yadu Nimbalkar for getting right to purchase those lands from the tenant on compliance of provisions of B.T.A.L. Act.***

(Emphasis supplied)”

5. Prima facie, in my opinion, the learned trial Judge was not justified in holding that the petitioner is entitled to inherit land Gat No.78, 84 and 87 of deceased Eknath Yadu Nimbalkar for getting right to purchase those lands from the tenant on compliance of provisions of Bombay Tenancy and Agricultural Lands Act, 1948. At the highest, the learned trial Judge could have issued Heirship Certificate in the name of the petitioner.

6. As noted earlier, the learned District Judge has set aside that order. The matter was adjourned so as to enable the parties to take instructions as to whether they are agreeable for setting aside the impugned orders and restoration of the application filed by the petitioner. After obtaining the instructions, they are agreeable for setting

aside the impugned orders and for restoration of the application filed by the petitioner. Hence, the following order:

- a. Judgment and order dated 21.09.2010 passed by the learned District Judge as also the judgment and order dated 30.07.2007 passed by the learned trial Judge are set aside;
- b. Civil Miscellaneous Application No.9 of 2004 is restored to the file of the learned trial Judge;
- c. Parties agree that they will appear before the trial Court on 02.05.2016 and for that purpose, no fresh notice be issued to them;
- d. The learned trial Judge is requested to decide the application on the basis of the material already on record and in accordance with law, within 6 weeks from the appearance of the parties;
- e. Rule is made absolute in the aforesaid terms with no order as to cost.

(R. G. KETKAR, J.)

Minal Parab