

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 594 OF 2015

SHRI. GANESH RAMBHAU AUTI	...Applicant
<i>Versus</i>	
SMT. VENUBAI POPAT BHOR	...Respondent

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Mr. Uday B. Nighot, Advocate for the Applicant.
Mr. A.G. Damle, Senior Counsel i/b. Ms. Gauri Jadhav, for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 16th FEBRUARY, 2016

P.C.

1. Heard Mr. Uday Nighot, learned Counsel for the applicant and Mr. Atul Damle, learned Senior Counsel for the respondent, at length.
2. Rule. Ms. Gauri Jadhav, waives service on behalf of the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and application is taken up for final hearing.
3. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'CPC') the applicant has challenged

the judgment and order dated 21.8.2015 passed by the learned Ad-hoc District Judge-1, Khed-Rajgurunagar, District-Pune in Civil Appeal No.6 of 2015. By that order, learned District Judge dismissed the appeal on the ground that appeal is not maintainable before District Court in view of Sections 384 and 390 of the Indian Succession Act, 1925 (for short, 'the Act').

4. The respondent had instituted Civil Misc. Application No.9 of 2014 under the Bombay Regulation No.VIII of 1827 (for short, 'said Regulations') for obtaining heirship certificate on the ground that her father Sakharam Korde died leaving behind her as the only heir and legal representative. By judgment and order dated 14.11.2014, learned trial Judge allowed the application and declared that the respondent is the heir of deceased Sakharam Rambhau Korde and accordingly issued certificate of heirship for the legal management of the properties of deceased Sakharam and not for transfer of property or transfer of any valuable security. Learned trial Judge ordered issuance of heirship certificate to the respondent as per rules.

5. Aggrieved by that decision, the applicant preferred Civil Appeal before the learned District Judge. By the impugned

order, learned District Judge dismissed the appeal on the ground that the appeal is not maintainable.

6. Mr. Nighot submitted that learned District Judge failed to consider the provisions of Part X of the Act comprising of sections 370 to 390. He submitted that Section 28A of the Maharashtra Civil Courts Act (for short, 'Civil Courts Act') as also Section 299 of the Act have no application to the facts of the present case. He submitted that learned District Judge even did not consider Section 388 of the Act. Section 390 of the Act lays down that notwithstanding anything in said Regulations the provisions of Sections 370(2), 372(1)(f), 374, 375, 376, 377, 378, 379, 381, 383, 384, 387, 388 and 389 with respect to certificates under this Part (Part X) and applications therefor, and of Section 317 with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as they can be made applicable, apply, respectively, to certificates granted under that Regulation. He submitted that the respondent made application before the learned Civil Judge, Junior Division, Ghodegaon. In view of Sections 384 and 388 as also notification dated 25.10.1890 and paragraph-304 and paragraph-305 of Civil

Manual, appeal will lie before the District Court. Learned District Judge though held that Sections 387 to 389 apply to the certificates granted under the said Regulations, did not consider whether appeal is maintainable in view of Section 388 of the Act. Mr. Nighot also relied upon the decision of this Court in the case of **Vitthal Ramchandra Mali and others v. Laxmi Ganpati Mali and others, 2006(4) Bom.C.R. 31.**

7. On the other hand, Mr. Damle supported the impugned order. He relied upon Section 28A of the Civil Courts Act to contend that the appeal lies to High Court and not to the District Court. He also relied upon decision of this Court in the case of **Smt. Nola Jonathan Ranbhise v. The Union of India and others, 2014(4) ALL MR 181.**

8. I have considered the rival submissions of learned Counsel appearing for the parties. I have also perused the material on record.

9. Perusal of the impugned order shows that learned District Judge has considered the provisions of paragraphs-304 and 305 of Civil Manual as also Section 390 of the Act. Learned

District Judge has however not considered the effect of Section 388 of the Act. In paragraph-12, the learned District Judge holds that in view of Sections 390, Sections 387 to 389 are applicable to the said Regulations in respect of issuance of heirship certificate. It also appears that the decisions of this Court in the case of **Nola Ranbhise** (supra) and **Vitthal Mali** (supra) were not cited before the learned District Judge.

10. In view thereof, the impugned order cannot be sustained and the same is liable to be quashed and set aside and thereby restoring Civil Appeal No.6/2015 before the learned District Judge. All contentions of the parties as recorded in this order and any other contentions that may be available are expressly kept open. Learned Counsel appearing for the parties state that they will appear before learned District Judge on 29.2.2016 and for that purpose no fresh notice be issued to them. Mr. Damle assures that within two weeks from the date of appearance of the respondents they will file reply and give advance copy to the applicants. Learned District Judge is requested to dispose of the appeal as expeditiously as possible and preferably within eight weeks from date of appearance of the

parties. Liberty is reserved with the applicant to apply for interim order. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)