

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**Civil Revision Application (ST) NO. 26386 OF 2015**

SMT. SAROJINI MUTTYAPPA @ MUTAPPA  
DONGRITOT AND ANR

...Applicants

*Versus*

SMT. AMBAVVA SHANKAR GANGONDA  
AND ORS

...Respondents

....

Mr. Sagar A. Joshi, Advocate for the Applicants.

Mr. Ashok B. Tajane, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 16<sup>th</sup> FEBRUARY, 2016

P.C.

1. Heard Mr. Sagar Joshi, learned Counsel for the applicants and Mr. Tajane, learned Counsel for the respondents, at length.

2. Rule. Mr. Tajane waives service on behalf of the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and the application is taken up for final hearing.

3. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, '**CPC**'), the applicants have

challenged the order dated 28.8.2015 passed by learned District Judge-3, Solapur below Exh.1 in Misc. Civil Application No.124/2013. By that order, learned District Judge ordered return of the appeal memo in Civil Appeal No.124/2013 to the applicants for presentation to the High Court within a period of 30 days from the date of the order.

4. The applicants instituted the proceedings under Section 372 of the Indian Succession Act, 1925 (for short, '**the Act**') before the Court of Civil Judge, Senior Division, Solapur praying *inter alia* for declaration that the applicants are the legal heirs of the deceased Muttyappa @ Mutappa Dongritot; for grant of heir-ship certificate to applicant No.1 for claiming family pension amount as mentioned in para-6A; for grant of heir-ship certificate to enable the applicants to claim the amount set out in para-6B to 6H.

5. By judgment and order dated 1.8.2013, learned Civil Judge, Senior Division, Solapur partly allowed the application. Learned trial Judge held that respondent No.1

Ambavva Mutappa Dongaritot is entitled to receive the monthly pensionary benefits. Learned trial Judge ordered issuance of succession certificate in the name of the applicants and respondent No.2 Anand Shankar Gangonda to the extent of  $1/3^{\text{rd}}$  share each. Applicant No.2 and respondent no.2, being legal heirs, were directed to pay Court fee to the extent of  $1/3^{\text{rd}}$  share each and applicant No.1 being widow of the deceased was exempted from payment of court fees. Learned trial Judge further ordered to issue succession certificate likewise. Aggrieved by this order, the applicants preferred Appeal on 12.8.2013 under Section 384 read with Section 388 of the Act and also Section 96 read with Order 41 Rule 1 of CPC before District Judge, Solapur. During pendency of the appeal, they also took out an application Exh.45 for stay of the execution and operation of the appellate Court's order.

6. By the impugned order, learned District Judge returned the appeal memo to the applicants for presentation to the High Court. In para-2 of the impugned order, learned

District Judge referred to a decision of Division Bench of this Court in the case of **Smt. Nola Jonathan Ranbhise v. the Union of India and others, 2014(4) ALL MR 181**. Learned District Judge observed that the Division Bench of this Court held that every order made by a Civil Judge invested with the powers of a District Judge or a District Court, as the case may be, under the Act in terms of sub-section (1) of Section 28A of the Maharashtra Civil Courts Act (for short, '**Civil Courts Act**') shall be subject to appeal to the High Court in accordance with the provisions of CPC, applicable to appeals, irrespective of whether the amount or value of the subject matter exceeds or does not exceed ten lakh rupees. Learned District Judge accordingly ordered return of the appeal permitting the applicants to present the same in High Court within 30 days.

7. Mr.Joshi strenuously contended that learned District Judge failed to appreciate the provisions of Sections 372, 384, 388, 390 of the Act. He submitted that Section 28A of Civil Courts Act as also Section 299 of the Act have

no application to the facts of the present case. Learned District Judge also committed serious error in relying upon the Division Bench judgment of this Court in the case of **Nola Jonathan Ranbhise** (supra). 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 Bombay Regulation No.VIII of 1827 (for short, '**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 and applications made for certificates thereunder, after the 1<sup>st</sup> day of May, 1889 and to the exhibition of inventories and accounts by the holders of such certificates so granted.

8. He submitted that the Part X comprises of Sections

370 to 390. Section 372 provides for application for certificate which is required to be made to the District Judge. Section 373 lays down procedure of application. Section 383 provides for revocation of certificate. Section 384 provides for remedy of appeal and lays down that an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under Part X. Section 388 provides for investiture of inferior Courts with jurisdiction of District Court for purposes of the Act. In short, he submitted that Part X is a complete Code by itself. Section 28A of Civil Courts Act and 299 of the Act have no application in the facts and circumstances of the case. He relied upon the decision of this Court in the case of **Vitthal Ramchandra Mali and others v. Laxmi Ganapati Mali and others, 2006(4) Bom.C.R. 31.**

9. On the other hand, Mr. Tajane supported the impugned order. He submitted that in the present case the applicants have made application under Section 372 of the Act. Section 372 of the Act lays down that the application is

required to be made to the District Judge. He submitted that the application made by the applicants under Section 372 of the Act itself was not maintainable before the Court of Civil Judge, Senior Division. He relied upon Section 28A of Civil Courts Act and also Section 299 of the Act and relied upon the decision of this Court in the case of **Nola Jonathan Ranbhise** (supra).

10. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record.

11. Perusal of the impugned order shows that learned District Judge has considered the decision of this Court in the case of **Nola Jonathan Ranbhise** (supra). Learned District Judge also considered the provisions of Section 28A of Civil Courts Act. Learned District Judge however did not consider effect of Section 388 of the Act. Learned District Judge also did not consider whether the decisions of the Division Bench of this Court in the case of **Nola Jonathan Ranbhise** (supra) and of the learned Single Judge of this

Court in the case of **Vitthal Mali** (supra) are applicable or not in the facts and circumstances of the present case. That apart, Mr. Joshi submitted that in fact the respondents also did not raise any objections and the learned District Judge on his own had passed the order.

12. In my opinion, learned District Judge was not justified in passing the impugned order without considering the applicability or otherwise of Division Bench judgment of this Court in the case of **Nola Jonathan Ranbhise** (supra) and the decision of learned Single Judge of this Court in the case of **Vitthal Mali** (supra). Learned District Judge should have considered applicability of section 28A of Civil Courts Act and Section 299 of the Act as also whether Sections 384 and 388 of the Act are applicable. Without considering these provisions, learned District Judge straightway proceeded to pass the impugned order.

13. In view thereof, the impugned order cannot be sustained and the same is liable to be quashed and set aside and thereby restoring Misc. Civil Appeal No.124/2013

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. Tajane 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. In the meantime, the order dated 18.1.2016 passed by this Court shall remain in force. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

( R. G. KETKAR, J.)

Deshmane (PS)