

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO.282 OF 2016
IN
MISCELLANEOUS PETITION NO.79 OF 2007

Sunkappa Yellappa Kunchikurve and others	... Petitioners
<i>Versus</i>	
Mashappa Ramchandra Derbere and others	... Respondents

Ms. Seema Chetri, *for the Plaintiffs.*

Ms. Aneeta Vasani, *for the Respondents Nos.3 and 5.*

Mr. Ashish Kamat, *with Ms. Simeen Shaikh, Ms. Rashmi Patil, and Ms. Priyanka Gharge i/b S.K. Srivastav and Company for the Intervenor.*

Mr. M. R. Mandawagde, *Officer on Special Duty, Court Receiver.*

CORAM: G.S. PATEL, J
DATED: 29th August 2016

PC:-

1. Heard.

2. This report is filed in Miscellaneous Petition No.79 of 2007. That Petition was for grant of a Heirship Certificate. It also sought to revoke and set aside the Heirship Certificate granted and order made in a previous Miscellaneous Petition No.65 of 1998.

3. The Petitioners claim to be the heirs and legal representatives of one Ramabai Yellappa, who died on 30th July 1995. One of the properties in dispute, said to be the part of the estate, is Flat No. 91, B-2, Bustan Cooperative Housing Society, Bellasis Road, Mumbai 400 008. This flat originally stood in the name of one Bharati Rajput. It was transferred to one Idris Haji Abdul Rahim and his wife Rabiya under an Agreement of Sale of 7th May 1996. It seems that on 13th June 2001, Idris and Rabiya transferred and sold this flat to one Fatima Rehman, Mr. Kamath's client. That agreement was not registered. However, there followed a Deed of Confirmation dated 8th July 2008 to which the agreement was annexed. This was registered. The transfer was duly recorded and approved by the housing society. The share certificate is in Fatima's name and the flat is in her possession since 2001. She has paid all maintenance and electricity bills.

4. On 7th December 2007, in this Miscellaneous Petition No.79 of 2007, the Petitioners and the Respondents together sought an order on Notice of Motion No.115 of 2007. The Notice of Motion was disposed of by consent. It restrained Respondent Nos. 1 to 5 from acting on or in furtherance of the heirship certificate in respect of the same deceased that those Respondents had previously obtained (in Miscellaneous Petition No.65 of 1998) by an order of 13th July 2007. There is no difficulty with this part of it. However, the parties also agreed to the continuation of the Court Receiver appointed in the previous Miscellaneous Petition No.65 of 1998.

5. This is a real problem. As Mr. Kamat points out, citing two decisions of this Court in *Aloysius Manuel D'Souza and others v*

*Mary Kamala William Manuel D'Souza*¹ and *Group Gram Panchayat, Sasavane v Sunanda Shamrao Bandishti & Ors.*,² proceedings under the Bombay Regulation Act VIII of 1827 do not decide questions of title. In fact there is no adjudication of civil rights in relation to property in such proceedings. There are also not to be proceedings of a complicated or difficult nature. If there is any such complicated or difficult question or issue it must be tried by a regular Suit. This is what Clause 4 of Bombay Regulation VIII of 1827 says. The purpose of an heirship certificate is set out in Clauses 1 and 2 — to make it safer for persons in possession of or indebted to the estate to deal with an heir, executor or an administrator. As Mr. Kamath correctly points out, Clause 8 of Bombay Regulation VIII of 1827 makes it clear that even if an heirship certificate is refused, the rights of the applicants are not thereby determined. This is a not, therefore, a *lis* in relation to property or estate. It is a declaration that certain persons are the legal heirs of the deceased; that is all.

6. The two decisions cited by Mr. Kamath, one of a Division Bench (*Aloysius D'Souza*) and the other of a single judge (*Sasavne Gram Panchayat*) analyse the ambit and purpose of Bombay Regulation VIII of 1827. Clause 7 of that Regulation only indicates the person who is in legal management of the deceased's estate. The grant of an heirship certificate does not finally determine nor injure the rights of any person. The certificate may be annulled on proof of a competing preferential right. The refusal of a certificate is not determinative of the rights of even the applicant — he can still bring a regular title suit to establish his claim. Equally, the grant of a

1. 2006 (6) Bom. C.R. 56.

2. 2011 (2) Mh.L.J. 424.

certificate does not confer or take away title — the rights of the claimant and his opponent are left untouched, and these must be agitated and decided in a regular civil suit before a court of competent jurisdiction. The decisions make it clear that the grant or refusal of an heirship certificate does not establish or take away the title of any party to any property in the deceased's estate. The heirship certificate *simpliciter* does not confer title to any property. The petitioner before Karnik J in *Sunanda Shamrao Bandishti* claimed ownership of some property. That contention was repelled in view of the Division Bench decision in *Aloysius D'Souza*. Questions of title, Karnik J held, are alien to the enquiry under Bombay Regulation VIII of 1827.

7. The appointment of a Court Receiver is for preservation in *status quo* of a property that is the subject matter of a *lis* before the Court. There is no *lis* about property in an heirship petition. The only determination is if the applicants are entitled to a certificate that they are the heirs of the deceased. Any questions of title must be decided in other properly constituted civil proceedings before a competent court.

8. It follows, therefore, that there can never be an appointment of a Court Receiver in such a proceeding. A court cannot appoint a Court Receiver either on its own motion or at the instance of any of the parties before it. Any such order is wholly without statutory foundation. I very seriously doubt that a Court Receiver can be appointed under Section 151 of the Code of Civil Procedure, 1908, either. No one before me suggests that this is what the Court did. It seems that all that happened was that parties in 2007 *jointly* applied

to the Court to continue a previous Court Receiver — and that initial appointment itself was one that could not have been made — and everyone proceeded from there.

9. It seems that armed with this order of 7th December 2007, the Court Receiver came to Fatima's flat to take possession. Fatima and her husband resisted the Court Receiver. This is recorded in a site report. On 10th March 2008, the Court Receiver took formal possession and obtained provisional undertakings. On 13th April 2009, the present Miscellaneous Petition came up for final hearing. At that time, the Petitioners and Respondents filed consent terms and took an order, again by consent. Some clauses of the Consent Terms are material. Clause Nos. 1, 2, 5 and 10 are read as follows:-

“(1) The Petitioners and Respondent No.1 to 5 have amicably settled their dispute to claim the estate of deceased Smt. Ramabai wd/o Yellappa Sanappa Kunchikurve, in respect of movable and immovable properties of the said deceased, more particularly described in Schedule annexed hereto as “**Annexure-A**”

(2) The Petitioners and Respondent No.1 to 5 have agreed to withdraw the above proceeding against Respondent No.6, Smt. Bharati Nawab Rajput and same should be dismissed for want of prosecution against Respondent No.6.

(5) The Court Receiver, High Court, Mumbai appointed by and order dated 7th December 2007 in the above Petition, be directed to take actual physical possession of the said properties which are set out in Annexure-A here to belongs to deceased Smt. Ramabai Kunchikurve, and same may be disposed of by Public

auction and / or private treaty, by exercising its all powers inclusive of sale of the properties mentioned in Annexure-A hereto, under Order 40 Rule 1 of Civil Procedure Code.

(10) It is further agreed by and between the Parties hereto that the name of Bharti Nawab Rajput if it is found in any record of deceased Ramabai shall be deleted and the names of Petitioners and Respondent No.1 to 5 shall be entered as the Joint owners of the properties with all right, title, interest as the co-owner of the properties.

10. Now the effect of all of this is that the Petitioners and the Respondents, without joining Fatima, though possession had been sought from her already, proceeded to get the Court Receiver to take action and steps against her flat, including deleting the name of Bharati Rajput, Fatima's predecessor-in-title, from the action and in all records.

11. It is difficult to conceive of greater inequity and injustice. *Prima facie*, it seems to me that this was nothing but a fraud on the Court. Bharati Rajput, Fatima's predecessor-in-title, was deleted as a party to the Suit after which this order was obtained. The Court Receiver by then knew that Fatima was in possession, and had made a report. All parties knew that Fatima and her husband had resisted possession being taken by the Court Receiver. Yet, Fatima was not made a party or given notice of this proceeding though it directly affected her.

12. There have been subsequent meetings before the Court Receiver. Some Constituted Attorneys have expressed their intentions to sell property situate at Gulbarga in Karnataka. There are other properties as well.

13. Today directions are sought *inter alia* in respect of Fatima's flat in the Bustan Cooperative Housing Society as also other properties.

14. I will do nothing of the kind. I will dismiss this Court Receiver's Report, which is wholly misconceived. The entire action of appointing the Court Receiver is alien to the law governing the parent action. I will discharge the Court Receiver. He could never have been appointed. He certainly could not have been appointed by the Petitioners and Respondents in this roundabout and back door fashion. He most emphatically could not have been appointed in this manner so as to affect the rights claimed by Fatima and her predecessor-in-title.

15. Given the nature and frame of the proceeding and the statute under which it is brought, there was never any question of appointment of Court Receiver in the first place. No issue of title to any property movable or immovable is decided in these proceedings for an heirship certificate. In fact it seems to me that it is necessary that the so-called Consent Terms and the consent order be recalled and the Petition be set down for final hearing afresh. In consequence, the order of 7th December 2007 would also necessarily have to go. For the present, however, I will make no

order in that regard since the Miscellaneous Petition is not listed today. I will list the Miscellaneous Petition and on that day, I propose to discharge the Court Receiver, keeping it open to the Petitioners and the Respondents to file appropriate civil suits to establish their title to the property unprejudiced by any order in the Miscellaneous Petition, and leaving all contentions open.

16. The Court Receiver's Report is dismissed.

17. List the Miscellaneous Petition on the supplementary board on 2nd September 2016.

(G. S. PATEL, J.)