

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6367 OF 2016

KARIM MIYANBHAI MULANI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Petitioner : Smt. S.B. Chaudhari.
AGP for Respondent/State : Shri S.K. Tambe.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 19th June, 2017

PER COURT :-

1. The petitioners are aggrieved by the order dated 09/02/2016, passed by the Trial Court, by which, Civil Miscellaneous Application No. 04/2014, has been rejected. The petitioners had filed the said application under the Bombay Regulation VIII of 1827.

2. It is stated that one Noorbhai Janubhai Mulani died on 02/04/1979. Miyanbhai is the real brother of Noorbhai and the petitioner No. 1 / Karim is the son of the Miyanbhai. Petitioner No. 2 / Basha is the son of Motibhai who was also the son of

Miyanbhai. Petitioner No. 3 is the daughter of Miyanbhai and grand daughter of Noorbhai. The agricultural land of at issue is 2 Hector, 66 Arc. The petitioners contended that the land at issue is an agricultural land. It falls under the Gut No. 88/A and 87/B in village Sarmkundi, Tq. Washi, Dist. Osmanabad.

3. The Trial Court had rejected the application for seeking heirship certificate on two grounds. Firstly, that the petitioners failed to establish, as to why they desire the heirship certificate, after a long span of 35 years and secondly, the application filed by the petitioners is totally silent, as to whether the property at issue was owned and possessed by Noorbhai and no documentary evidence was produced on record.

4. I also find that the notice by way of a publication with regard to the petitioner, under the prescribed procedure, was published in a daily newspaper by name "Sangharsh" on 20/04/2014. No objections were received after such a publication. Though the learned counsel for the petitioners submit that daily newspaper "Sangharsh" has a wide

circulation, the learned AGP disputes the same as the name of such a newspaper is hardly known to anybody.

5. The learned counsel for the petitioners submit that this petition deserves to be allowed and heirship certificate deserves to be granted under Section 2 of the Bombay Regulation VIII of 1827. I am not convinced with the said submissions for the following reasons :

(a) The petitioners need to establish their blood relationship with Miyanbhai and Motibhai.

(b) The petitioners also have to establish that Miyanbhai and Motibhai are the two real biological brothers of the deceased Noorbhai, who is said to be unmarried and issue less.

(c) The family tree ought to have been placed on record before the Trial Court to clearly indicate that the petitioners would succeed deceased Noorbhai with regard to the agricultural land at issue.

(d) If the petitioners claim to be cultivators of the land, they should have produced the 7/12 extract, atleast of

three consecutive years, prior to the passing away of Noorbhai and for further years subsequent to his death, indicating that Miyanbhai and Motibhai both were cultivating the land at issue. Petitioner No. 1 / Karim is the son of Miyanbhai and the petitioner Nos. 2 and 3 are the son and daughter of Motibhai.

(e) The notice calling for objections, in my view, was not published in a newspaper which can be said to be having largest circulation in that area.

6. The petitioners, however, submit that a rightful claim cannot be defeated only on the point of the delay. Since, they are in possession of the agricultural land, there would be no entries in their names and their claims will go unnoticed.

7. This Court in the matter of Ganpati Vinayak Achwal [2014 (6) Mh.L.J. 683] has concluded that the application for heirship certificate is a continuous right and which can be exercised as long as the object of right as a heir exist. A period of 35 years would, therefore, not be an impediment. So also, as is held in

the Ganpati Vinayak Achwal's case (Supra), the claim of the petitioners can be entertained, if it is established that they are the persons in possession of the estate and would deal with such an estate.

8. Considering the above, it is obvious that the application before the court below was not properly conducted and several short comings have cropped in the said proceedings for which the petitioners alone could be blamed.

9. Nevertheless, it cannot be ignored that on account of the lacuna left by the petitioners in their application, their right if any, would be totally lost. Therefore, in the light of the peculiar fact of this case, I deem it proper to remand the matter to the court below for a paper publication of the notice calling for objections and for putting forth proper evidence, in the light of the factors reproduced in paragraph No. 5, here in above.

10. This petition is. therefore, partly allowed. The impugned order dated 09/12/2016, is quashed and set aside and M.A. No.

04/2014, is restored to the file of the learned Civil Judge, Junior Division, Washi, Dist. Osmanabad on the following conditions :

(a) The petitioner shall appear in the said proceedings on 07/07/2017.

(b) The Trial Court shall issue a fresh notice, calling for objections which the petitioner shall get published in Marathi "Dainik Lokmat", Osmanabad edition.

(c) The petitioners shall produce the 7/12 extract and other revenue records for a period of atleast three years, prior to the demise of Noorbhai Janubhai Mulani on 02/04/1979.

(d) The petitioner shall produce the 7/12 extract and the revenue records to the satisfaction of the Court below to indicate that after Noorbhai passed away, Miyanbhai, and Motibhai and Papabhai were cultivating the said land and after the passing away of Miyanbhai and Motibhai, the petitioners were cultivating the agricultural land and the revenue records stand in their name.

(e) The petitioners would justify the reasons for seeking

heirship certificate after 35 years of the demise of Noorbhai.

(f) The genealogy tree / family tree along with an affidavit individually sworn by these three petitioners, will be placed on record in the form of documentary evidence.

11. Needless to state, the learned Civil Judge, Junior Division, Washi, would thereafter decided M.A. No. 04/2014, on it's own merits and after considering the evidence and the above factors.

(RAVINDRA V. GHUGE, J.)

S.P.C.