

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6819 OF 2017
(Kamalabai w/o Bhikaji Kshirsagar Vs. Arwind Shivdas Mali)

Mr.P.R.Katneshwarkar, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/09/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 28/01/2014 passed by the Trial Court and 31/08/2016 passed by the Appellate Court by which an heirship certificate has been refused to the petitioner.

2. Mr.Katneshwarkar, learned Advocate for the petitioner has strenuously criticized the impugned orders and has drawn my attention to the 6 grounds formulated by him in the memo of the petition. With his assistance, I have considered the record.

3. I find that the petitioner claims that she was not a party to the earlier litigation in Reg.C.S.No.90/1974. Shivdas Namdev Mali had sought declaration of membership of the properties bearing CTS Nos.4027, 4028 and 4029 in Sr.No.13/1 at Osmanabad. The suit was

dismissed on 31/03/1978. The legal heir of Shivdas namely the respondent herein Arwind filed Reg.Civil Appeal, which was allowed by judgment dated 30/09/1982 and he was declared to be the owner of 23,682 Sq.ft of land in 13/1.

4. The original defendant Dattu challenged the judgment in RCS No.13/1978 by filing a Second Appeal No.202-A/1982. It was dismissed by this Court on 15/02/1993. Dattu approached the Hon'ble Supreme Court. The said SLP was also dismissed on 14/05/1993.

5. The petitioner Kamalabai sought an heirship certificate before the Trial Court in Misc.Appl.No.144/2013 claiming to be an owner of CTS No.4027. By order dated 13/08/2013, the said application was rejected on the ground that the learned Civil Judge, Jr.Dn. did not have jurisdiction. The matter was transferred to the learned Civil Judge, S.D. who rejected the heirship application by concluding that Kamalabai had nothing to do with the property.

6. The petitioner then moved the Appellate Court in Misc.Civil Appeal No.27/2015. By the impugned judgment, the said appeal was dismissed after concluding that the respondent Arwind was already

put in possession in execution proceedings and the present petitioner has no connection with the said property.

7. I find that this case is indicative of it being vexatious and frivolous litigation, fit to be imposed with heavy costs. Learned Advocate for the petitioner, however, pleads that the petitioner is a senior citizen and is a lady who is the daughter of deceased Krushnabai who claimed to be in possession of the property.

8. Considering the above, this petition is dismissed without imposing costs.

(Ravindra V.Ghuge, J.)