

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 179 OF 2017

Manoj Naguesh Naik

...Petitioner

Versus

Rajendra Ramchandra Petkar & Anr

...Respondents

Mr AF Diniz & Mr R Menezes, *Advocates for the Petitioner.*

Mr Vilas P Thali, *Advocate for Respondent no.1.*

CORAM: G.S. PATEL &
NUTAN D. SARDESSAI, JJ

DATED: 16th August 2017

PC:-

1. Heard.

2. The challenge is to an order dated 31st August 2015 of the Judicial Magistrate First Class, at Canacona, Goa, by which the first Respondent's application under Section 13(3) of the Registration of Births and Deaths Act, 1969 was granted. The present Petitioner was, in circumstances that we are quite unable to appreciate, allowed to 'intervene' in these proceedings. That was not a PIL. That was not a representative action. It could not have been.

3. In any case, the learned Judge further directed that the Registrar of Births and Deaths of the village concerned would

register the birth on 1st March 1959 of the present 1st Respondent (the Applicant before the JMFC), also described in the operative portion of the order as “*son of Shri Ramchandra Petkar and Smt. Mohini Petkar, grandson of Shri Navso Petkar and Smt. Ambika Petkar*”. The second portion of the second relief so granted, it is contended, purports to establish a two-generation genealogy of the 1st Respondent, one that was never even sought before the Court.

4. The real reason for the contest is that there is a property dispute between the Petitioner and the 1st Respondent. This was the subject matter of a regular civil suit in the Court of Civil Judge Junior Division, Canacona. The Petitioner complains that this birth is “being brandished” by the 1st Respondent. It is difficult to see how this can possibly determine or determinative of title to any property. Certainly, having obtained a birth certificate, the 1st Respondent may make legitimate use of it — there is no other reason for obtaining it in the first place — but that does not mean that his assertion of title to any immovable property is either established or dislodged based on an order in regard to his date of birth.

5. It is sufficient therefore to clarify that the Regular Civil Suit in question will be decided on its own merits uninfluenced by any observations in the impugned order. What to make of the birth certificate is a matter left to Court hearing the suit. All rights and contentions in that regard are specifically left open. The birth certificate itself is not *per se* conclusive of any question of title.

6. We further clarify that it is for the learned Judge hearing the suit to decide what weightage is to be given to the birth certificate and to decide how the trial should proceed once that certificate is duly proved and marked in evidence. We do not propose in this order to give any direction to the Trial Judge as to either framing of any particular issue or determining the burden of proof in that regard. All contentions, as we said, are kept open. Undoubtedly, both sides will have their remedy against any order, interim or final, that the Court hearing the suit may pass.

7. The petition is disposed of in these terms. No order as to costs.

NUTAN D. SARDESSAI J.

G. S. PATEL J.