

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 1289 OF 2016

Smt.Anjana Narayan Kulkarni & Ors. ...Appellants

Versus

None ...Respondent

.....

Mr.P.S.Dani, Senior Advocate i/b. Mr. Vivek V. Salunke for the
Appellants.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: AUGUST 22, 2017**

P.C. :

1. This First Appeal is directed against the order dated 13.02.2015 passed by the learned Civil Judge, Junior Division, Wai, thereby rejecting Civil Application No. 16 of 2013 filed by the appellants for obtaining the heirship certificate under the Bombay Regulations VIII of 1827.

2. Learned senior counsel for the appellants/original applicants has submitted that the appellants/original applicants are the children of late Krishnaji Kendhale and late Satyabhamabai Krishnaji Kendhale. He has further submitted that Satyabhamabai Kendhale died on 13.07.2008.

Satyabhamabai Kendhale is a daughter of Anandibai Kulkarni and granddaughter of Shreedhar Rale. He has further submitted that the appellants/original applicants are the legal heirs of Shreedhar Rale through their mother and maternal grandmother and these properties inherited to them and, therefore, after death of their mother Satyabhamabai, they claimed some landed properties from Districts Satara and Pune. He has further submitted that the appellants/original applicants have submitted the application for heirship certificate under the Bombay Regulations VIII 1827. He has further submitted that the appellants/original applicants have paid the requisite court fees. The appellants gave public notice on 01.02.2014 in a newspaper, namely, "Dainikekya". One Radhesham Vinayak Bhatt took objection and his objection was taken on record and marked at Exhibit 28. However, he did not appear and, therefore, after hearing the appellants/original applicants, the learned trial Judge ought to have issued heirship certificate in favour of the original applicants. He has further submitted that the learned Judge unnecessarily had gone into the title of the applicants in the property, which is a subject matter of the heirship certificate and held that for want of documentary proof that the original applicants are the legal heirs of Satyabhamabai, rejected the application. Hence, this appeal.

3. Heard. Perused the original application, impugned order and the Bombay Regulation VIII of 1827. While deciding the heirship certificate, it is not necessary for the trial Court to decide the title of the applicants in respect of the suit property. The heirship certificate is issued mainly for the management and administration of the property. In the present case, the appellants/original applicants have given public notice in the daily newspaper on 01.02.2014. One Radhesham Bhatt took objection to the said notice and that objection was marked at Exhibit 28. Pursuant to that, the trial Court has rightly issued notice, which was marked at Exhibit 32. However, the trial Court has also mentioned in the order that Mr. Radhesham Bhatt did not appear in the Court, though notice was issued to him. The trial Court has referred to the affidavits filed by the original applicants, which are marked at Exhibit 26. Death Certificate of Satyabhamabai is also produced, which is marked at Exhibit 4. The trial Court has also referred to 7/12 extracts and some correspondence made between the appellants/original applicants and the Circle Officer, Tehasildar Office, Yerwada. The learned Judge has unnecessarily demanded the documentary proof in respect of the title of Rale Family, who is a great-grand-father of the original applicants, in respect of the suit properties. The trial Court has held that there is no

chain between Satyabhamabai and late Sundar Visaji Rale, which shows that she was his legal heir. However, while issuing the heirship certificate, the Court has power to reject such application if it is disputed. However, if at all the party who is taking objection is not appearing before the Court or nobody appeared in the said heirship application as an opponent, then on the basis of available affidavits and the documents, the heirship certificate can be granted, as the heirship certificate is not a declaration of the title.

4. Considering the steps taken by the original applicants and as Radhesham Bhatt, who took objection, after issuance of public notice, did not appear before the trial Court, the trial Court should have issued the heirship certificate in favour of the appellants/original applicants. I therefore, set aside the order dated 13.02.2015 passed by the learned Civil Judge, Junior Division, Wai. The trial Court is directed to issue the heirship certificate in favour of the appellants/original applicants.

5. First Appeal is disposed of accordingly.

(MRIDULA BHATKAR, J.)