

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 7681 OF 2017

Smt. Shakuntala Gajanan Kulkarni ... Petitioner
Vs.
Dr. Hemang Dayashankar Koppikar & Ors. ... Respondents

Mr. Rafeeq Peermohideen i/b. Jeetendra Sachdev, Advocate for the petitioner.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **10th July, 2017.**

P.C.:

Not on board. Upon mentioning, taken on board.

2. This Writ Petition is directed against the order dated 10th April, 2017 passed by the learned 9th Joint Civil Judge Senior Division, Thane below Exhibit 93 in Miscellaneous Application No. 118 of 2008 wherein the Application moved by the respondents under section 10 r/w. section 151 of Code of Civil Procedure requesting to stay the proceedings of Miscellaneous Application No. 118 of 2008 is rejected.

3. The present petitioner is a respondent in the Miscellaneous Application. The present respondent has received the heirship

certificate from the Thane Court and the said order of granting heirship certificate is challenged by filing Miscellaneous Application No. 118 of 2008 for revocation of the said heirship certificate. The said proceeding is pending before the Thane Court. On the other hand, the respondent no. 1, who is an original applicant in the Miscellaneous Application No. 118 of 2008, has also filed Testamentary Petition No. 1015 of 2005 before the High Court and the same is also pending.

4. It is contented by the learned counsel for the petitioner that the fate of the heirship certificate depends on the probate of the will which is strongly disputed by the present petitioner in the Testamentary proceedings. He submitted that if the will is not probated, then this Revocation Petition will fail automatically and if at all the will is probated, then the heirship certificate will also revoke automatically. He submitted that the decision in the Testamentary proceedings has direct bearing over the decision of the Miscellaneous Application which is the matter before the Civil Judge Senior Division at Thane. He further relied on the reply given by the respondent in the petition where he has also admitted that the proof of the authenticity of the will, will decide the issue of revocation of

heirship certificate.

5. Perused the order passed by the learned trial Judge. Perused the documents placed herein. It is true that the genuineness of the will is a decisive factor, however, it will decide whether the respondent is legal successor of the deceased. The Application is moved under section 10 r/w. 151 of CPC. Section 10 says about the suits. Miscellaneous Application filed for revocation of heirship certificate is an enquiry and not a suit, therefore, section 10 is not attracted. Moreover, the issues are not directly and substantially one and same though the decision of the truthfulness of the will has bearing over the heirship certificate. If at all some admissions are given by the respondent in his affidavit-in-reply, it is up to the parties how to make use of it. The order passed by the learned trial Judge is neither perverse nor illegal. No interference is required. Writ Petition is dismissed summarily.

(MRIDULA BHATKAR, J.)