

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1677 OF 2017

POPATLAL KHIMCHAND VARDHAN] PETITIONER

Vs.

STATE OF MAHARASHTRA & ORS.] RESPONDENTS

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Mr. Vishal Kanade, Counsel a/w Ms. Swapna Roopwate, Ms. Shivangi Bajoria i/b Mr. Tushar A. Goradia, for petitioner.

Ms. Uma Palsule-Desai, A.G.P, for respondents No.1 and 2.

Mr. Y.R. Mishra a/w Mr. Ajay Vardhan, for respondents No.3 and 4.

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CORAM : R.G. KETKAR, J.

DATE : 27th JULY, 2017.

P.C.

Not on board. At the request of Mr. Kanade, taken up for admission.

2. Heard Mr. Kanade, learned Counsel for the petitioner, Ms. Palsule-Desai, learned A.G.P for respondents No.1 and 2 and Mr. Mishra, learned Counsel for respondents No.3 and 4 at length.

3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 26th November, 2012 passed by Collector, Mumbai City, Mumbai in

RTS Appeal No. 19 of 2012 as also the judgment and order dated 16th June, 2017 passed by the learned Member [Administrative], Maharashtra Revenue Tribunal, Mumbai [for short 'Tribunal'] in Appeal filed u/s 274 of Maharashtra Land Revenue Code, 1966 [for short 'Code']. By that order, the Tribunal dismissed the appeal preferred by the petitioner.

4. In support of this Petition, Mr. Kanade submitted that petitioner and respondents No.3 and 4 are the biological sons of Khimchand Vardhan. Khimchand Vardhan died leaving behind four sons and two daughters. He submitted that on 21st September, 1993, respondents No.3 and 4 made application to the Superintendent of Land Records, Old Custom House, Fort, Mumbai for rectification of the record. He submitted that respondents No.3 and 4 falsely contended that their grandfather Pratapchand Parkhaji and grandmother, Samdabai expired in the year 1948-1949 respectively leaving behind their father Khimchand. Khimchand died in the year 1981 leaving behind respondents No.3 and 4. Mother of respondents No.3 and 4 had expired in the year 1972. In short, respondents No.3 and 4 contended that they are the only heirs and legal representatives. Along with that application, they also gave joint declaration and indemnity bond to the effect that they are the only heirs and no one other than respondents No. 3 and 4 are the legal heirs. He submitted that this application was made behind the back of the petitioner. The petitioner came to know about this entry only when public notice was issued in July, 2010. Immediately, thereafter the petitioner

made application on 29th September, 2011 before Collector, Mumbai for recording names of all the legal heirs and representatives of Khimchand Vardhan in respect of C.S. No. 611 of Byculla Division, 43, Kamathipura Lane 8th Lane, Mumbai. By order dated 26th November, 2012, Collector Mumbai rejected the application by directing the petitioner to approach the competent Court for obtaining succession certificate. Aggrieved by that order, petitioner preferred appeal before the Tribunal. On 1st July, 2016, the learned Member [Judicial] of the Tribunal pronounced the order and partly allowed the appeal and set aside the order dated 26th November, 2012 and remitted the matter to the Collector, Mumbai City for deciding it afresh. He has taken me through the operative order dated 1st July, 2016 at Exhibit A, pages 234-235/ However, subsequently, learned Member [Administrative] passed order on 16th June, 2017 dismissing the appeal. He submitted that once operative part was pronounced on 1st July, 2016 by the learned Judicial Member of the Tribunal, the learned Member Administrative, Maharashtra Revenue Tribunal could not have passed order inconsistent with the operative part of the order.

5. On the other hand, learned Counsel for the respondents submitted that on 6th February, 1956 petitioner was given in adoption to Dhanraj Vardhan. They have taken me through the findings recorded by the Tribunal in the impugned order wherein all along petitioner was shown as Popatlal Khimchand Vardhan. They further submitted that petitioners did not raise objection before the learned Administrative Member that as operative order

dated 1st July, 2016 was pronounced allowing the appeal, matter could not have been heard by the learned Administrative Member. In fact, the petitioner participated in hearing before the Tribunal.

6. I have considered the rival submissions advanced by the learned Counsel for the parties. I have also perused the material on record. A perusal of the order dated 26th November, 2012 passed by the Collector shows that Collector directed the petitioner to approach the competent Court for obtaining succession certificate. The Collector has considered copy of adoption Deed dated 6th February, 1956 produced on record wherein name of the petitioner is shown as Popatlal Khimchand Vardhan. Collector, therefore, observed that the petitioner having gone in adoption will have to establish his heirship by approaching competent Court. Accordingly, Collector, Mumbai City rejected the application made by the petitioner and directed him to approach the competent Court for obtaining succession certificate.

7. It is no doubt true that against this order appeal preferred by the petitioner was heard by the learned Judicial Member. Operative part of the order was pronounced on 1st July, 2016. Thereafter, the learned Judicial Member retired and did not pass a reasoned order. With the result, matter was heard by the learned Administrative Member. That time petitioner did not raise any objection but rather participated in hearing of the appeal. By the impugned order, appeal was dismissed. A perusal of the impugned order and in particular paragraphs 4 and 5 thereof, I do

not find that the Tribunal committed any error in dismissing the appeal. In clause 2 of the operative order, the Tribunal made it clear that the petitioner is not precluded to get his grievance settled through a competent Court, if so desired and legally advised. In view thereof, Petition fails and the same is dismissed. If petitioner approach the competent Court, competent Court shall decide the matter un-influenced by the observations made in the impugned order and this order. All the contentions of the parties are expressly kept open. Order accordingly.

[R.G. KETKAR, J.]