

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6814 OF 2015
(Sampat s/o Shankar Patole and others Vs. The State of
Maharashtra and others)

Mr.A.P.Bhandari a/w Mr.A.L.Kanade, Advocate for the petitioners.
Mr.B.A.Shinde, AGP for respondent No.1/State.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 03/08/2018

PER COURT :

1. The petitioners are aggrieved by the order dated 05/03/2015 passed by the Appellate Court by which Reg.Civil Appeal No.27/2014, seeking to challenge the grant of an heirship certificate under Section 3 and 7 of the Bombay Regulations Act, has been held to be untenable in law and hence the appeal memo was returned to the appellant. The Appellate Court has relied upon the judgment of this Court in the matter of Smt.Nola Jonathan Ranbhise Vs. Union of India [2014(4) All MR 181].

2. Despite service of Court notice, none has caused an appearance on behalf of respondent Nos.2 and 3 who have been granted the heirship certificate by the Trial Court vide order dated 07/02/2013 in M.A.(R) No.12/2012.

3. In order to render assistance to the Court, I had called upon Mr.Bhandari, learned Advocate to make his submissions on the various provisions of Law which are required to be considered by this Court while dealing with this petition wherein the petitioners contend that the Appellate Court in the form of the District Court, would have the jurisdiction to entertain the appeal preferred by these petitioners.

4. The submissions of Mr.Bhandari h/f Mr.Kanade can be summarized as under :-

[a] Section 390 provides that the provisions of Section 370, 373(2), 374(1)(f), and Sections 374 to 379, 381, 383, 384 and 387 to 389, with respect to the certificates under Part X, succession certificates under the Indian Succession Act, 1925, can be made applicable to the certificates granted under the Bombay Regulation No.VIII of 1827.

[b] Under Section 388, which deals with investiture of inferior Courts with jurisdiction of the District Court for the purposes of this Act, the State Government, by notification in the Official Gazette, may invest any Court inferior in grade to a District Judge with the power to exercise the functions of a District Judge under this Part.

[c] While referring to sub section 2 of Section 388 which invests the inferior courts with the powers conferred upon the District Judge, to exercise such powers as if it were a District

Judge, the proviso there below clearly indicates that an appeal from any such order of an inferior Court exercising the jurisdiction of the District Judge, would lie before the District Judge and not before the High Court.

[d] The judgment of the learned Division Bench in the matter of Smt.Nola (supra), would not apply to this case as the issue with regard to a probate was being considered by the said Court under Section 28A (1) of the Bombay Civil Courts Act, 1869.

[e] Under Section 28A, the High Court can invest the Civil Judges with the jurisdiction within local limits and under such certain acts, subject to the pecuniary limitation that has been prescribed in such order with all or any of the powers of a District Judge or a District Court, as the case may be under the Indian Succession Act, 1865, {the Probate and Administration Act, 1881} or paragraph No.3 of Schedule III to the Code of Civil Procedure, 1908.

[f] In the above backdrop, Section 28A would be the provision by which the investiture of powers has been provided and the pecuniary jurisdiction of the Courts have been defined.

[g] The abovesaid provision of Section 28A would not affect the notification issued by the State Government to invest such powers in a Court inferior in Grade to a District Judge to exercise powers and functions of a District Judge under Part X.

[h] Succession certificates can be issued under Part X subject to the jurisdiction prescribed and the manner of making an application.

[i] Though the District Judge has been invested with the jurisdiction to grant a certificate under Section 371, of the

nature prescribed under Section 370, Section 388 would enable an inferior Court in grade to a District Judge to deal with such proceedings and grant a certificate. By virtue of the proviso below Section 388, the appeal would lie to the District Court.

5. A specific reliance is placed upon the reported judgment of the learned Single Judge in the matter of Vitthal Ramchandra Mali and others Vs. Laxmi Ganpati Mali and others [2006 AIR(Bom.) 298] which has then been considered by another reported judgment of the learned Single Judge of this Court in Sunil Raju Salampure Vs. State of Maharashtra and others [2017 (3) Mh.L.J. 404].

6. The learned AGP joins Mr.Bhandari in so far as the submission that an heirship certificate issued by the Civil Court under Regulation 3 and 7 of the Bombay Regulations, would render an appeal maintainable before the District Judge in view of the proviso below Section 388 of the Indian Succession Act.

7. I find that, by placing reliance upon the judgment in Vitthal Ramchandra (supra), this Court has held in Sunil Raju (supra) that the ratio laid down in Smt.Nola (supra) was with regard to Section 299 of the Indian Succession Act wherein an order passed under

Chapter IV in relation to granting and revoking probates or letters of administration, was appealable before the High Court. It was concluded that Section 388 of the Indian Succession Act, that has enabled the State Government to invest a Court inferior in Grade to the District Judge to exercise the functions or powers of the District Judge under Part X of Chapter 13, would render an appeal maintainable before the District Judge under the proviso below Section 388 (2).

8. I find that the view taken by the Single Judge Bench in the matter of Vitthal (supra) was not cited before the District Court which has delivered the impugned order dated 05/03/2015. For the present, the view taken in Vitthal (supra), has therefore been considered once again in Sunil Raju (supra).

9. In view of the above, this petition is allowed and the impugned order dated 05/03/2015 stands quashed and set aside. Regular Civil Appeal No.27/2014, preferred by these petitioners, stands restored to the file of the learned Ad-hoc District Judge-3, Jalna for being adjudicated upon on its own merits. The petitioners shall appear before the said Court on 20/08/2018. As the respondents have not appeared in the instant proceedings, the learned District

Court would issue notices to the respondents and thereafter decide the said proceedings on the merits of the matter.

10. Learned Advocate for the petitioners voices an apprehension that the respondents are seeking alterations in the revenue records and that would probably be with an intention of creating third party rights and encumbrances. In the face of such an apprehension, these petitioners would be at liberty to make a request to the learned District Judge for equitable orders.

11. Mr.Bhandari, learned Advocate deserves appreciation for having prepared himself in this matter ably within a single day's time for rendering assistance to the Court.

(Ravindra V.Ghuge, J.)

Kranti
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