IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

FIRST APPEAL NO. 3154 OF 2016

1. Leelabai w/o Dnyaneshwar Ambildhage (Gaikwad), Age 44 years, occupation : Household, R/o H. no.2-1-317, Narlibagh, Aurangabad

2. Sagar s/o Dnyaneshwar Ambildhage (Gaikwad), Age 25 years, occup Nil, Household, R/o H. no.2-1-317, Narlibagh, Aurangabad .. Appellants/ Orig.Applicants

versus

1. State of Maharashtra, Through District Collector, Aurangabad

2. Narmada Dnyaneshwar Gaikwad, Age : Major, Occup. Nil, R/o H. No.1-26-273, Harsha Nagar, Aurangabad .. Respondents/ Orig.Respondents

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Mr. Nishant S. Mansingka, Advocate, holding for Mr. P. N. Surwase, Advocate for appellants
Mr. B. V. Virdhe, Asstt. Government Pleader for respondent no.1
Mr. Mohsin Khan, Advocate for respondent no. 2

CORAM : SUNIL P. DESHMUKH, J.
DATE : 23rd April, 2018

ORAL JUDGMENT:

1. Heard learned counsel for the parties.

2. The appellants who are applicants in miscellaneous application requiring judicial enquiry bearing no. 600 of 2013

being aggrieved by order dated 21-03-2016 rejecting their claim for grant of succession certificate are before this court in first appeal.

3. After hearing learned counsel, it transpires that applicant no. 1 and respondent no.2 claim to be wives of deceased Dnyneshwar Ambildhage Gaikwad. He died on 01-05-2013. As such, appellants as well as respondent no. 2 are competing for pensionary benefits and amounts in bank account of deceased Dnyaneshwar.

4. Perusal of impugned judgment and order shows that learned judge has considered only oral evidence of appellants and has taken into account appointment letter dated 08-10-2010 in favour of Sunil. Learned judge has further considered that while appellant no. 1 claims to have married Dnyaneshwar she has not given any details and particulars and in the given situation, it is difficult to arrive at a definitive conclusion in favour of either side.

5. Learned counsel for appellants refers to paragraphs no. 5 and 6 of the impugned judgment and submits that despite so much documentary evidence being placed on record, none of the documents is considered while deciding the matter. He also purports to refer to couple of judgments. In the circumstances,

he submits that learned judge of the trial court has not properly appreciated the evidence on record and the matter should be looked at accordingly.

6. Learned counsel for respondents, however, submits that deceased himself had given an affidavit way back in 2009 that Sunil is his son and further there is no dispute that Sunil is begotten to him from respondent no. 2 Narmada. Accordingly, there had been an appointment order issued in favour of Sunil which is not disputed. In the circumstances, he submits, a proper view has been taken by learned judge requiring no interference.

7. Although learned counsel have submitted as aforesaid, quite a few documents appear to have been produced and relied on by either side which finds mere reference in paragraphs no. 5 and 6 by learned judge in impugned judgment. It appears that documents produced on record have not received their due as those have neither been referred to nor considered while giving reasons in impugned judgment. Judgment does not depict as to why the documents placed on record have not been considered. Matter appears to have been considered cursorily.

8. As such, it would be in fitness of things and interest of justice to remand the matter for reconsideration and afresh.

9. In the circumstances, impugned order is set aside. Matter is remanded to civil court for re-adjudication afresh giving parties appropriate opportunity. Re-adjudication shall take place as early as possible preferably within a period of four months from the date of receipt of writ of this order.

10. Parties to appear before trial court on 12-06-2018 dispensing with notice by civil court to them.

11. Appeal is disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd