

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7857 OF 2016

Gajanan S/o. Namdev Talele,
Age : 72 years, Occu. : Agriculture,
R/o. 275, Vithal Peth, Jalgaon,
Taluka & District Jalgaon

.. Petitioner
(Orig. Applicant)

Versus

Chandrakant Vithal Talele,
Age : Major, Occu. Agriculture,
R/o. Rampeth, Old Jalgaon,
District Jalgaon

.. Respondent
(Intervener/Objector)

...
Mr. S.G. Chapalgaonkar, Advocate for petitioner
Mr. Girish Rane, Advocate for respondent
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 20-06-2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties.

2. The petition has been moved against the order dated 20-06-2016 passed on Exhibit - 17 in Probate Application No. 4 of 2011 by 4th joint civil judge (senior division), Jalgaon, where-under respondent's application to be impleaded to the proceedings, has been allowed.

3. Learned Counsel for petitioner submits that the application filed by respondent has been scanty and does not disclose as to his interest in the property left behind by the testator. There is no depiction of any interest much less about his *caveatable* interest as may be germane in such legal proceedings. His barren application cannot be allowed. In the circumstances, the application ought to have been rejected.

4. One of the legs of submission on behalf of the petitioner, had been that strictly speaking, order I, rule 10 of code of civil procedure would not have application in the present proceedings. The proceedings cannot be equated with suit.

5. Learned counsel for respondent, however, submits that the petitioner is real uncle of the respondent. He submits that originally, the property concerned belonged to their grandfather, who had four daughters. Daughters were married and only mother of petitioner has progeny from the marriage, whereas the rest of the three sisters have died issueless. Out of the three sisters, two sisters are stated to have executed wills whereas the third one has died intestate.

6. He submits that while probate proceedings were initiated in respect of the will executed by petitioner's grandfather,

by father of present respondent, present petitioner had been impleaded as a party. Whereas, in respect of probate proceeding will claimed to be executed by one of the aunties of present respondent, neither his father since his father is no more, nor the respondent, had been impleaded. He submits that going by the undisputed relationship, it would not be a case that respondent would have no interest in the probate proceedings or for that matter, in the property purportedly bequeathed under the will. Presence of present respondent, in the circumstances, would be necessary. Upon realizing that probate proceedings are initiated at the instance of present petitioner, application Exhibit - 17 came to be moved and has been allowed. The court will have to consider submissions and objections on behalf of the respondent. He submits that since the application had been filed in haste, it may not ostensibly depict the averments as are being canvassed on behalf of the petitioner, yet, the very genesis of the application had at the core, the interest in the proceedings and the property under the will.

7. During the course of hearing, learned counsel for the parties have referred to various citations.

8. With the aid of citations, learned counsel for petitioner Mr. Chapalgaonkar submits that focus has to be on genuineness

and/or validity of execution of will in the probate proceedings and, as such, the entry being sought in such proceedings by respondent without disclosing any *caveatable* interest, would not be allowed.

Learned counsel for petitioner has relied on following authorities :

- i) *Kanwarjit Singh Dhillon Vs. Hardy Singh Dhillon and others* reported in (2007) 11 Supreme Court Cases 357
- ii) *Ratnaprabha W/o Digambar Nemade and others Vs. Kisan S/o Laxmanrao Deshmukh* reported in 2015(6) Mh.L.J. 345
- iii) *Krishna Kumar Birla Vs. Rajendra Singh Lodha and others* reported in (2008) 4 Supreme Court Cases 300
- iv) *Jagjit Singh and others Vs. Pamela Manmohan Singh* (2010) 5 reported in Supreme Court Cases 157 and
- v) *Kusum Bharat Asarpota Vs. Jagdish Asarpota and another* reported in 2015(1) Mh.L.J. 127

9. Suffice it to refer to that citations on behalf of the petitioner emphasize that scope of the probate proceedings is restricted to test genuineness and validity of execution of will.

10. Learned counsel for the respondent, however, submits that having regard to the observations as appearing in the decision of this court in the case of *B.B. Paymaster and others Vs. Mrs. Baurawa Sangappa Kadapatti and others* reported in 2005(2) Mh.L.J. 137, it would not be a case that the application moved by respondent is an application by a stranger or a person, who would not have interest at all. He particularly refers to paragraph no. 9 therein and submits that situation in the present matter is quite similar.

11. Having regard to the undisputed position about the relationship and that application has been made purportedly objecting to probate proceedings, at this stage, may not be said to be by a person who has no *caveatable* interest as sought to be contended on behalf of petitioner. This aspect, at this stage, is a matter may not be germane to be considered. Learned judge while passing the order has taken into account the relevant aspects and has allowed the application.

12. In the circumstances, the writ petition is not being entertained and is being rejected, leaving it open for the parties to take up all contentions, as are available in fact and in law.

13. Rule stands discharged.

[SUNIL P. DESHMUKH]
JUDGE

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