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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 149 OF 2016

Sunil Waman Bhide	...	Petitioner
V/s.		
Chandrabhas Laxman Kanhere		
and ors	...	Respondents

Mr. Rishikesh M. Pethe, for the Petitioner.
Mr. S. M. Gorwadkar i/by Sujay H. Gangal,
for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 20th FEBRUARY, 2018.

P.C. :

1] Heard learned counsel for the petitioner and learned counsel for the respondents.

2] By this Revision Application, filed under Section 115 of the Code of Civil Procedure, the petitioner is challenging the order dated 13.01.2016, passed by 6th Joint Civil Judge Senior Division, Pune, below Exh.13 in Misc. Application No.616 of 2013.

3] Application at Exh.13 was filed by the present petitioner for framing of preliminary issue as to whether the petition filed for revocation of the probate is maintainable in the present form.

4] The trial Court, has after hearing learned counsel for both

the parties and after perusing various authorities and case laws cited before it, has held that the application in the present form is maintainable.

5] After going through the impugned order passed by the trial court and in view of the judgment of Supreme Court, in case of **Nalini Bhagwati -vs- Chandravadan Mehta, [1997 (1) SCC 57]**, it cannot be said that the trial Court has committed any error in holding that the Misc. Application filed for revocation of the probate is maintainable.

6] The issue raised before trial Court, as can be seen from the perusal of the impugned order passed by the trial Court is only to the extent as to whether the petition is maintainable in the present form. The present form was the Misc. Application. According to the petitioner, it should have been in the form of a suit as such Misc. Application was not maintainable.

7] The trial Court, as stated above, has rightly held that the application filed as Misc. Application is maintainable and there need not be any necessity of suit to be filed for revocation of the probate. The impugned order passed by the trial Court, as such, does not call for any interference.

8] However, learned counsel for the petitioner brings to the notice of this Court, the contention raised in paragraph No.1(b) of the

Application Exh.13 in which it is contended that respondents herein have no right to file such application for revocation of the probate and hence it is liable to be set aside. In the course of arguments before this Court, learned counsel for petitioner submits that having regard to the provisions of Section 15 of Hindu Succession Act 1956, respondents have no right to claim any share in the property left behind by Nalini @ Rajeshwari Nagarkar and therefore their application for revocation of the probate was not maintainable.

9] However, the perusal of the order passed by the trial Court shows that it does not touch this aspect. The reason may be because in the application, petitioner has not made these facts clear as to why respondents have no right to file application on the ground that they have no right to get share in the property of deceased Nalini. It is pertinent to note that at the time of arguing this application before trial Court also, this contention might not have been taken. Hence it is not found reflected in the impugned order.

10] However, having regard to the fact that such contention was raised in the application, in my considered opinion, the Revision can be disposed of by giving liberty to petitioner to file fresh application, if he desires to do so, taking specific contention in that behalf.

11] In case, any such application is filed before the trial Court,

the trial Court will decide the same on its own merits by giving an opportunity of hearing and of filing say to the respondents.

12] Except for the above, no interference is warranted in the impugned order passed by the trial Court.

13] Revision Application is disposed of in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]