

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL REVISION APPLICATION (CRA) NO. 08 OF 2018

(Smt. Leelabai Anandrao Wattamwar .v. Smt. Anusayabai Mamidwar and others)

Office Notes, Office Memoranda of Coram
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's Orders

Shri Rohit Joshi, Advocate for the applicant.
Shri S.C. Bhalerao, Advocate for the respondents.

CORAM : MANISH PITALE, J.
23RD APRIL, 2018.

Heard.

This is revision application filed by the applicant challenges two concurrent orders passed by the Courts below on an application filed for grant of succession certificate.

One Anandrao Wattamwar died on 28.01.2010. The applicant herein, claiming to be his second wife, applied under Section 372 of the Indian Succession Act, 1925, for grant of succession certificate in her favour in respect of certain securities and deposits lying in the name of said deceased Anandrao. In the said application, filed before the Court of Civil Judge, Senior Judge, Darwha (trial Court), the respondents herein appeared as objectors. The respondent No.1 is the sister of the deceased and respondent Nos.2 to 4 are the sons of the brother of deceased.

By judgment and order, dated 16.01.2017, the trial Court rejected the application of the applicant herein and held that the respondents were entitled for grant of succession certificates in their names. It was held by the trial Court that since the applicant herein was the second wife of the deceased, even during the lifetime of the first wife, she was not entitled for the succession certificate and that the respondents being the class-2 heirs of the deceased, were entitled to said succession certificate.

Being aggrieved by the said judgment and order, the applicant filed Miscellaneous Civil Appeal No. 3 of 2017 before the Court of District Judge, Darwha (appellate Court) under Section 388 of the aforesaid Act. By the impugned judgment and order,

the appellate Court found that the applicant was not legally wedded wife of the deceased and that she was not a class-1 heir. On this basis, the appellate Court dismissed the appeal and confirmed the findings of the trial Court.

Being aggrieved by the said judgment and order of the appellate Court, this revision application has been filed.

Shri Rohit Joshi, learned Counsel appearing on behalf of the applicant submits that even if the applicant was found to have married the deceased during the lifetime of first wife, it could not be said that she had no right in the properties left behind by the deceased. It is further contended that it was only the first wife of the deceased who could legitimately raise objection to the application filed before the trial Court and that the applicant was entitled for relief under Section 14(1) of the Hindu Succession Act, 1956.

Shri Bhalerao, learned Counsel appearing on behalf of the respondents submits that there was no error committed by the Courts below and that once it was held that the applicant was not legally wedded wife of the deceased, she had no right to have the succession certificate issued in her favour. Learned Counsel, therefore, submits that the instant revision application deserves to be dismissed.

Having heard the learned Counsel appearing on behalf of the respective parties and upon perusal of the record, it appears that no error has been committed by the Courts below while rejecting the application filed by the applicant herein under Section 372 of the Indian Succession Act, 1925. By its very nature, the proceedings initiated under the said provision are summary in nature. This is evident from perusal of Sections 372, 373(3) and 387 of the aforesaid Act. A conjoint reading of the said provisions not only shows that the findings rendered by the Court in such proceedings are summary in nature, but any finding in such proceedings does not bar any of the parties to such proceedings to approach the trial Court raising the same question that was raised in these proceedings. Section 387 of the aforesaid Act makes it

very clear that if any of the parties raises such a question in any suit then nothing in that part of the aforesaid Act shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

The obvious purport of the said provision is that the applicant herein is not prohibited from filing a suit to air her grievance and to prove that she would be entitled to the debt or security left behind by the deceased by initiating appropriate proceedings before the Civil Court. The findings rendered by the Courts below in the proceedings initiated under Section 372 of the said Act are prima facie in nature and, therefore, it could not be said that the Courts below have committed any error in granting the succession certificate to the respondents herein.

Therefore, the instant revision application is dismissed. The applicant is obviously at liberty to exercise the remedy available to her under Section 387 of the aforesaid Act. Since there was an interim order dated 31st January, 2018 passed by this Court during the pendency of the revision application, in the interest of justice, the same is continued for a further period of four weeks from today.

In the light of the above, the revision application is dismissed with no order as to costs.

JUDGE

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