

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928 WRIT PETITION NO.8432 OF 2018

PUSHPA GANGADHAR GANDIGUDE
VERSUS
THE ADMINISTRATOR FOR CITY AND INDUSTRIAL
DEVELOPMENT CORPORATION OF MAHARASHTRA

...
Advocate for Petitioners : Mr. V.G. Kodale h/f Mr. P.G. Rodge
Advocate for Respondent No.1: Mr. R.S. Wani
Advocate for Respondent Nos. 2 to 5: Mr. S.S. Deshmukh
Advocate for Respondent No.6: Mr. A.N. Patale
...

CORAM : V. K. JADHAV, J.
DATED : 10th DECEMBER, 2019

PER COURT :-

1. By consent of the parties heard finally at admission stage.
2. Undisputedly, the petitioner is legally wedded wife of Deceased - Gangadhar who died on 01.05.2015 at Mukramabad, Taluka Mukhed, District Nanded. Respondent Nos. 2 to 5 are real daughters and respondent no.6 is son of deceased - Gangadhar and petitioner. Deceased - Gangadhar was the owner in possession of suit tenement viz. bearing No. ND-42, Sector J-III, 37/04 situated at CIDCO, New Nanded. There is no dispute that during his lifetime, Deceased - Gangadhar had purchased the said tenement from respondent no.1 - CIDCO and respondent no.1 - CIDCO has allotted the

said plot to deceased - Gangadhar and also delivered the possession on 01.11.1989. Deceased - Gangadhar was managing and supervising all the affairs in respect of the said plot/tenement till his death. The said property was self-acquired property of Deceased - Gangadhar. Deceased - Gangadhar since died intestate, the petitioner herein has filed an application bearing RJE No.303 of 2015 under Section 278 of the Indian Succession Act, 1925 for issuing the letter of administration. Respondent nos. 2 to 5 have appeared in the matter and filed their consent written statement as Exhibit-50. So far as respondent no.6 son of Deceased - Gangadhar is concerned, he has raised the objection. According to him, the rest of the respondents have joined hands with the petitioner - mother to preclude him from his share and prayed for dismissal of the application. By judgment and order dated 03.01.2017, learned Civil Judge, Senior Division, Nanded, allowed the application viz. RJE No. 303 of 2015 and directed to issue the letter of administration in the name of petitioner - Pushpa in respect of the property detailed in foregoing paras with a specific direction that the letter of administration is received only for the above purposes.

3. Being aggrieved by the same, respondent no.6 herein has preferred Misc. Civil Appeal No. 14 of 2017 before the Ad-hoc District Judge-1, Nanded. By impugned judgment

and order dated 16.12.2017, the learned Ad-hoc District Judge-1, allowed the Misc. Civil Appeal No.14 of 2017 and set aside the order of trial Court and further directed to the trial Court to call back the Letter of Administration which was given in the name of the petitioner – Pushpa and issue fresh letter of administration in the name of petitioner – Pushpa as well as respondent no.6 – Santosh in respect of the suit tenement. Hence, this writ petition.

4. Learned counsel for the petitioner submits that in terms of the provisions of Section 218 of the Indian Succession Act 1925, if the deceased who professes the Hindu religion died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate. Learned counsel submits that in terms of Sub-section 2 of Section 218, when several such persons apply for such administration, it shall be in the discretion of the Court to grant it to any one or more of them. Learned counsel submits that the trial court has exercised discretion in favour of the petitioner who happened to be the widow and there is nothing on record to indicate that the trial court has exercised the said discretion arbitrarily. Learned counsel submits that it is settled law that the letter of administration does not confer title to the

property. The interference by the first appellate court with the discretion exercised by the trial Court with sound reasoning is unwanted and uncalled for.

5. Learned counsel for respondent no.6 submits that the financial condition of respondent no.6 is poor. The petitioner is getting pension as per rules, which her deceased - husband was getting during his lifetime. Apart from this, the petitioner is also collecting the rent amount of the said tenement from tenants. Furthermore, there is another landed property standing in the name of the petitioner and respondents. The petitioner is alone taking yearly yields of the said agricultural land. Learned counsel submits that the lower appellate court has thus exercised the discretion under Section 218 of the Indian Succession Act and accordingly, directed the trial court to issue letter of administration in respect of the petitioner so also respondent no.6 - son.

6. I have also heard the learned counsel appearing for respondent nos. 2 to 5. Learned counsel submits that the daughters have already filed their consent written statement in favour of the petitioner- mother.

7. So far as Section 218 of the Indian Succession Act, 1925 is concerned, Sub-section 2 of Section 218 provides that when several such persons apply for such administration, it

shall be in the discretion of the Court to grant it to any one or more of them. Section 218 is reproduced herein below:

“218. To whom administration may be granted, where deceased is a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person – (1) If the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

(2) When several such persons apply for such administration, it shall be in the discretion of the Court to grant it to any one or more of them.

(3) When no such person applies, it may be granted to a creditor of the deceased.”

8. On careful perusal of the impugned order passed by Ad-hod District Judge-1, I do not find any observations indicating that the trial Court has exercised the discretion arbitrarily. Even assuming that the son is a class – 1 legal heir, however in terms of Sub-Section 2 of Section 218, the administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, the trial court has exercised the said discretion in favour of petitioner/widow. Respondent no.6 is a married son, residing separately with his wife and children. Apart from this, it is settled law that the grant of probate or letter of administration does not confer title to the property.

9. In a case of ***Delhi Development Authority Vs. Mrs. Vijaya C. Gurshaney*** reported in **(2003) 7 SSC 301** that Supreme Court emphasized the following principle;

“A Testamentary Court is only concerned with finding out whether or not the testator executed the testamentary instrument of his free Will. It is settled law that the grant of a Probate or Letters of Administration does not confer title to property. They merely enable administration of the estate of the deceased.”

10. Section 8 of the Hindu Succession Act, 1956 provides that the property of a male Hindu dying intestate shall devolve according to the provisions of Section 8 and clause (a) of Section 8 speaks about; ‘firstly, upon the heirs, being the relatives specified in class-I of the Schedule’. In terms of schedule, respondent no.6 falls in the category of class-1 legal heir. In view of the same, respondent 6 is always at liberty to institute the suit for claiming his share in the suit tenement. However, letter of administration is just the interim arrangement to administer the property left by the deceased died intestate. In view of the same, I find no reason to interfere in the order passed by the trial Court. The order passed by the appellate court dated 16.12.2017 in Misc. Civil Appeal No.14 of 2017 is thus liable to be quashed and set aside. Hence, I proceed to pass the following order:

ORDER

(I) The writ petition is hereby allowed.

(II) The impugned order passed by the Ad-hoc District Judge-1, Nanded dated 16.12.2017 is hereby quashed and set aside.

(III) The judgment and order passed by Civil Judge, Senior Division, Nanded dated 03.01.2017 in RJE No. 303 of 2015 stands confirmed.

10. The writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

Sam..