

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

**CIVIL REVISION APPLICATION NO.83 OF 2018
[WRIT PETITION NO.83 OF 2018 (OLD)]**

Jankidevi Pandurang Baheti,
Age : 63 years, Occ. Household,
r/o. Kalpana Nagar Housing Society,
Plot No.8/B,
Behind Ushakiran Talkies,
Latur

..Applicant

Vs.

1. Rajendra @ Jagdish s/o.
Bajrangilal Bhattad,
Age : 39 years, Occ. Business,
2. Sham s/o. Vishnudas Bhattad,
Age : 39 years, Occ. Business,

Both r/o. c/o. Vishnudas Bhattad,
Behind Amba Hanuman Temple,
S.B.H.Colony, Ambajogai Road,
Latur

..Respondents

Mr. S.P.Urgunde, Advocate for applicant
Mr. Amit Deshpande, Advocate for respondents

**CORAM : R.G. AVACHAT, J.
DATE : AUGUST 30, 2019**

JUDGMENT :-

Rule. Rule made returnable forthwith. With
the consent of learned Counsel for the parties, heard
finally.

2. The challenge in this Civil Revision Application (old Writ Petition No.7956 of 2011) is to the judgment and order dated 16.11.2010 passed by learned District Judge-1, Latur in Regular Civil Appeal No.133 of 2009. By the impugned judgment and order, the application preferred by the respondents herein for grant of succession/heirship certificate in their favour, came to be allowed setting aside the judgment and order dated 07.08.2009 passed by learned Joint Civil Judge, Senior Division, Latur, in Misc. Application No.175 of 2006.

3. Heard Mr.Urgunde, learned Counsel for the applicant and Mr.Deshpande, learned Counsel for the respondents.

4. Mr.Urgunde, learned Counsel for the applicant, would submit that the will in question was surrounded by suspicious circumstances. The propounder of the will namely, the respondents, failed to prove the will in accordance with law.

Learned Counsel took me through the will in question. Learned Counsel, ultimately, urged for allowing the application.

5. Mr.Deshpande, learned Counsel for the respondents, on the other hand, would submit that the will has duly been proved. A public notice/citation was issued in a Daily. The legal representatives of deceased – Ramkishan (testator) should have come forward to raise any objection. The daughter of deceased – Ramkishan (testator) came forward with an objection. The appellate Court, after having appreciated the evidence in the case, came to the conclusion that the will has duly been proved. The appeal, thus, came to be allowed granting succession/heirship certificate in favour of the respondents. In view of learned Counsel for the respondents, the Civil Revision Application, therefore, deserves to be dismissed.

6. Deceased – Ramkishan died on 02.02.1996. He owned a house property, being House No.R-2/474

standing on plot bearing C.T.S. No.5548, situate at Latur. Deceased – Ramkishan is said to have executed a will on 08.12.1987 giving life interest in the aforesaid property to his wife Jadaobai and after her demise, the property shall be owned by the respondents, sons of deceased – Ramkishan's two daughters.

7. After hearing the matter, it was noticed that the legal representatives of deceased – Ramkishan, who have been disinherited under the alleged will, were not before the Courts below. It is, therefore, surprising, as to how learned District Judge-1, Latur, could grant succession certificate in favour of the respondents herein.

8. The title of the application (M.A. No.175 of 2016), shows that it was filed under Section 372 of the Indian Succession Act ("the Act", for short). As such, the application was for grant of succession certificate. It needs no mention that succession

certificate is granted in respect to any debt or securities of the deceased. Here, the application was filed to get the house property of the deceased, recorded in the name of the respondents by virtue of the alleged will. Since the application was not in respect of debt or security of deceased – Ramkishan, the application for grant of succession certificate should not have been entertained by the Courts below. Section 372 of the Act provides the particulars which need to be set forth in the application moved for grant of succession certificate. Clause (c) of Section 372(1) mandates particulars about the family or other near relatives of the deceased and their respective residences. It appears that the mandate of this provision had not been complied with.

9. The will is stated to have been executed on 08.12.1987. It is on a plain paper. Deceased – Ramkishan, executant of the will, died on 02.02.1996. It is the contention of the respondents that the widow of deceased – Ramkishan namely, Jadaobai was

given life interest in the house property. She died on 26.10.2003. Learned Judge rejecting the application, appears to have rightly appreciated the evidence in the case and came to the conclusion that the alleged will has not been proved.

10. Section 373(1) of the Act provides that the application under Section 370 of the Act need to be decided in a summary manner. Sub-section (3) of Section 373 states that if the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto.

11. Perusal of the evidence in the case, undoubtedly, indicates that intricate questions of law and fact were involved therein. It was difficult to determine the same in a summary proceeding.

12. The most important factor that has resulted in miscarriage of justice by allowing the appeal, is that deceased – Ramkishan is survived by two sons and three daughters. The respondents, as sons of two of the daughters of deceased – Ramkishan, did not make all the Class-I heirs of deceased – Ramkishan, parties to the application for grant of succession certificate. The matter was proceeded against and reached upto this Court. Two sons and three daughters, being Class-I heirs, succeed to the estate of the deceased, under the alleged will, all these heirs have been disinherited. The succession certificate has been granted in favour of the respondents herein without giving notice of the application to the Class-I heirs of deceased – Ramkishan. As such, the impugned judgment and order passed in appeal suffers from a vice. The impugned order passed in appeal, therefore, needs to be interfered with.

13. Needless to mention that no decision under Part X, Section 387 of the Act, upon any question of right between any parties, shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties.

14. The respondents, who claim to be legatees under the will, have, therefore, to approach the competent Court to establish their right of being legatees. Whatever observations have been made by the Court rejecting the application and by this Court regarding suspicious circumstances surrounding the will, therefore, have no bearing on the proceedings, wherein the alleged will would be in question.

15. In view of the above, the Civil Revision Application is allowed in terms of prayer Clause (B). Rule made absolute accordingly.

[R.G. AVACHAT, J.]