

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 148 OF 2019

Abdul Samad Kadar Shaikh

Applicant

Versus

Shaikh Nijam Babumiya Jahagirdar
& others

Respondents

Mr. R.A. Tambe, Advocate for the applicant.

Mr. D.D. Pokharkar, Advocate for respondents no. 2, 3 and 4.

CORAM : M.S. KARNIK, J.

DATE : 13th August, 2019.

PER COURT :

1. Heard learned counsel for the revision applicant. It is the contention of learned counsel for the applicant that paragraphs no. 118 and 119 of the Principles of Mahomedan Law do not preclude a Mahomedan from executing a will in favour of a stranger. He would further submit that the Courts below were not justified in dismissing the application made by the applicant only on the ground that consent of the legal heirs is not obtained in terms of paragraphs no. 118 and 119 of the Principles of Mahomedan Law.

2. Learned counsel for the respondents supported the impugned order. He would state that the property which is mentioned in paragraph no. 1B of the application for which probate is sought, is not a part of the will. He would invite my attention to paragraph no. 23 of the order passed by the trial Court where a finding is recorded that the will was executed without consent of the heirs.

3. Learned counsel for the applicant though made a vehement attempt to contend that in terms of paragraph no. 118 a Mahomedan can by will dispose of 1/3rd of his estate, however, reading of paragraphs no. 118 and 119 would reveal that bequest to an heir is not valid unless the other heirs consent to the bequest after the death of the testator. Further there is no dispute that the testator has some heirs as can be borne out from the findings of the Courts below.

4. It is one of the contentions of learned counsel for the applicant that he had received land admeasuring 4 acres and 2 gunthas in the year 1984 from the State Farming Corporation, to whom the testator had leased the land. It is the contention of learned counsel for the applicant that the heirs never objected to this. This according to learned counsel makes petitioner as heir of the testator. I do not find any merit in this submission as it is seen that even this land is not received by the petitioner directly from the testator but it is received from the State Farming Corporation after the death of the testator. This by itself would not be sufficient to conclude that applicant is the legal heir of the deceased. It is not the case of the petitioner that he is the legal heir of the testator as a blood relative.

5. In this view of the matter, I see no reason to interfere with the order passed by the Courts below. Civil Revision Application is dismissed.

(M.S. KARNIK, J.)

dyb/