

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3649 OF 2016

WITH

CIVIL APPLICATION NO.806 OF 2016

IN

FIRST APPEAL (ST.) NO.22188 OF 2015

Keshav s/o Gunderao Deshpande,
Age : 60 years, Occu. Agri.,
R/o Itkur, Post Kallam,
District Osmanabad,
at present 49, "Rupak",
Samartha Nagar, Ambejogai,
District Beed

APPELLANT
(Orig. Objector)

VERSUS

1. Bhaskar s/o Abasaheb Deshpande,
Age : 70 years, Occu. Agri.,
R/o at Post Diksal, Tq. Kallam,
District Osmanabad
2. Shridhar Abasaheb Deshpande,
Since deceased, through L.Rs.
- 2A. Smt. Kamalbai w/o Shridhar Deshpande,
Age : 70 years, Occu. Household
R/o c/o Dr. Nishikant Deshpande,
P.A. Mini. Jal-Sampada,
Sachivalaya, Mumbai – 400 023
- 2B. Dr. Nishikant s/o Shridhar Deshpande,
Age : 40 years, Occu. Service,
P.A. Mini. Jal-Sampada,
Sachivalaya, Mumbai – 400 023
- 2C. Manjusha @ Bhagyashri Nishikant
Deshpande, D/o Shridhar Deshpande,
R/o c/o Dr. Nishikant Deshpande

2D. Shrikant Shridhar Deshpande,
Age : 45 years, Occu. Engineer,
R/o P.No.956, C/o Kailash Chandra
Wahoo, Mahanadi Vihar,
Post Naya Bazar, Cuttack, Odisha

3. Subhash Abasaheb Deshpande,
Age : 64 years, Occu. Agri.,
R/o Kalpana Nagar,
Behind Dr. Dikle House,
At Post Tq. Kallamb,
District Osmanabad

4. Prabhakar Govindrao Deshpande,
Age : 84 years, Occu. Nil,
R/o 723/1/7B, Adhyapak Colony,
Kurduwadi Road, Barshi,
At & Post and Tq. Barshi,
District Solapur

RESPONDENTS

Mr. P.G. Godhamgaonkar, Advocate for the appellant/
applicant

Mr. A.M. Gaikwad, Advocate for respondent Nos.1, 2A, 2B,
2D, 3 and 4

CORAM : SUNIL K. KOTWAL, J.

JUDGMENT RESERVED ON : 20th MARCH, 2019
JUDGMENT PRONOUNCED ON : 27th MARCH, 2019

JUDGMENT :

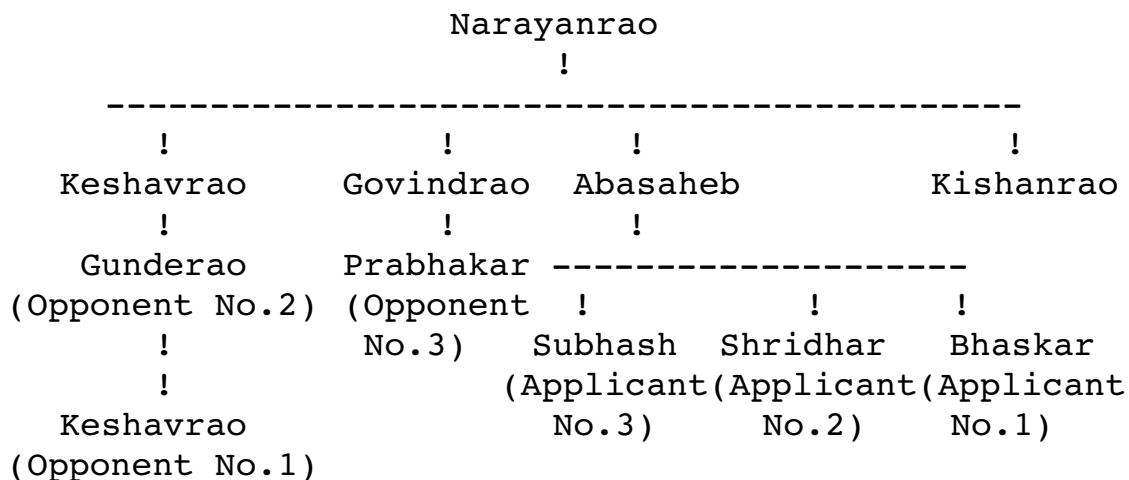
This appeal is directed by the Objector in
Misc. Application No. 66 of 2001 for grant of succession
certificate, against the order dated 10th April, 2008
passed by the Civil Judge, Senior Division, Osmanabad.

Respondent Nos.1 to 3 are original applicants and respondent No.4 is original opponent No.3.

2. Heard Shri P.G. Godhamgaonkar, learned counsel for the appellant and Shri A.M. Gaikwad, learned counsel for respondent Nos.1, 2A, 2B, 2D and 3 and 4.

3. After hearing learned counsel for both the parties, following facts emerge before the Court.

. Narayanrao Deshpande was the common ancestor of appellant and respondents. He died in the year 1930. He had four sons namely Keshavrao, Govindrao, Abasaheb and Kishanrao. Keshavrao died in 1934, Govindrao died on 20th October, 1982, Abasaheb died on 25th April, 1983 and Kishanrao died on 26th May, 1982. Kishanrao died issueless. Opponent No.1 is grandson and opponent No.2 is the son of Keshavrao. Opponent No.3 is son of Govindrao and original applicant Nos.1 to 3 are the sons of Abasaheb. The relevant genealogy, showing the relationship in between the parties, is as follows :



4. Undisputedly, Keshavrao, Govindrao, Abasaheb and Kishanrao partitioned their ancestral joint family property and became separate from each other in every manner in the year 1976. After separation, Kishanrao sold out his landed property and the sale consideration of Rs.19,000/- was invested in fixed deposit bearing No.704222 for ten years on 27th May, 1980 in State Bank of Hyderabad, Branch at Kallam. Subsequently, opponent No.1 was inducted as co-holder of the fixed deposit receipt, on an application moved by Kishanrao. After the death of Kishanrao on 26th May, 1982, as he was issueless, opponent No.1 applied for withdrawal of the fixed deposit amount to concerned bank and that time, Abasaheb Narayanrao deshpane raised objection. In the

result, the concerned bank refused to pay the fixed deposit amount to opponent No.1 and demanded succession certificate.. Therefore, opponent No.1 filed Regular Civil Suit (RCS) No.109/1983 against the bank, which was decreed on 23rd January, 1986. The bank preferred appeal before the District Court. The appeal was allowed. Against that judgment and decree, opponent No.1 preferred Second Appeal No.133/1999 before this Court. It was decided on 24th February, 1999 and this Court directed the bank to publish an advertisement in newspaper, inviting objections regarding the release of fixed deposit receipt in favour of opponent No.1. If nobody objects the release of fixed deposit amount, the bank shall encash the fixed deposit receipt in favour of opponent No.1. In case of objection by any third person, opponent No.1 shall obtain succession certificate from the competent Court and thereafter, he can approach the bank for encashment of the fixed deposit receipt.

5. Accordingly, when bank published advertisement at the expenses of opponent No.1, applicant Nos.1 to 3 raised objection. However, opponent No.1 instead of obtaining succession certificate from the competent Court, filed review application along with Civil

Application No.5930/2001 for condonation of delay. That application for condonation of delay was rejected by the High Court and in the result, the review application was disposed of. Lateron, instead of opponent No.1, applicant Nos.1 to 3 filed Misc. Application No. 66/2001 for succession certificate. In that proceeding, opponent No.1 filed reply (Exh-21) and opposed the claim of the applicants on the ground that being joint holder of fixed deposit receipt, he has exclusive right to receive the amount of fixed deposit receipt. He has also raised objection regarding non-joinder of necessary parties and bar of limitation. After hearing learned counsel for both parties and after recording evidence in that matter, learned Trial Court was pleased to allow the Misc. Application and held that applicant Nos.1 to 3 and opponent No.3 are entitled for succession certificate. That judgment is challenged in the present appeal.

6. After hearing learned counsel for both the parties, following points arise for my consideration. I have recorded my findings thereon for the reasons stated hereinbelow :-

Sr. No.	Points	Findings
1	Whether opponent No.1 has exclusive right to receive the entire amount invested in fixed deposit, after death of Kishanrao ?	NO
2	Whether the Misc. Application for succession certificate is bad for non-joinder of necessary parties ?	NO
3	Whether the Misc. Application is barred by limitation	NO. The application is within limitation
4	Whether the judgment and order passed by the Trial Court in Misc. Application No.66/2001 is correct and proper	YES
5	What order	First Appeal is dismissed

R E A S O N S

As to point No.1 :

7. At the stage of arguments, learned counsel for the appellant has not disputed the relationship in between the parties and partition in between four brothers in the year 1976. His contention is that opponent No.1 was joined as co-holder, on an application moved by Kishanrao Deshpande. He submits that after death of Kishanrao, by survivorship, opponent No.1 has

become the exclusive owner of the amount invested in fixed deposit by Kishanrao. He submits that intention of Kishanrao can be gathered from his act of joining opponent No.1 as co-holder of fixed deposit receipt.

8. The next contention of learned counsel for the appellant is that as Kishanrao did not die intestate, the provisions of Hindu Succession Act are not applicable in the case at hand. He submits that the application submitted by Kishanrao to the bank for joining opponent No.1 as co-holder, shall be treated as a Will or Gift, executed by Kishanrao in favour of opponent No.1.

9. Learned counsel for the respondents submits that only because opponent No. 1 was inducted as joint holder of fixed deposit receipt, he cannot become the exclusive owner of the amount invested by Kishanrao. He submits that under Section 8 read with Section 11 of the Hindu Succession Act, 1956, only applicants and opponent No.3 are entitled to share in the fixed deposit amount of Kishanrao as his class-2 legal heirs and opponent No.1 has no right to claim that amount as he is class-2 legal heir of Kishanrao.

10. The next contention of learned counsel for respondents is that the theory of Will of Kishanrao or Gift by Kishanrao is beyond the pleading of opponent No.1 and therefore, cannot be considered. He submits that as Kishanrao died intestate, the provisions of the Hindu Succession Act will apply in the case at hand.

11. While considering the preliminary objections raised by learned counsel for the appellant that in view of bar imposed under Section 370 of the Indian Succession Act, 1925, the applicants cannot claim succession certificate as the fixed deposit receipt is security within meaning of that Section, after going through sub-section (2) of Section 370, it becomes clear that the fixed deposit receipt does not fall within the category of "security", as defined under sub-section (2) of Section 370 of the Indian Succession Act. Therefore, bar under section 370 is not at all attracted in the case at hand. Otherwise also, this point is already set at rest in aforesaid Second Appeal and subsequent review application.

12. At the outset, I must make it clear that the contention of learned counsel for the appellant that the application submitted by Kishanrao to the concerned bank

while inducting opponent No.1 as joint holder of fixed deposit receipt, shall be treated as Will of Kishanrao Deshpande or his gift, is not at all acceptable as this theory is beyond pleadings of opponent No.1. Otherwise also, the application submitted by Kishanrao Deshpande to State Bank of Hyderabad, Branch at Kallam (C6) clearly indicates that Kishanrao Deshpande never intended to give the fixed deposit amount to opponent No.1. On the other hand, in the application, it is specifically mentioned that the fixed deposit amount should be made payable only to Kishanrao N. Deshpande. Even the fixed deposit receipt (Exh-23) shows that it was issued in the name of Kishanrao N. Deshpande and Keshavrao Gunderao Deshpande. It is also mentioned in the fixed deposit receipt that it was payable to former only. It means that the amount invested in fixed deposit receipt was payable only to Kishanrao N. Deshpande and not to opponent No.1 Keshavrao Gunderao Deshpande.

13. Thus, the above contention of learned counsel for the appellant is rejected.

14. Learned counsel for the appellant submits that Kishanrao Deshpande did not die intestate. However, no

will or gift or any other testamentary document executed by Kishanrao, disposing his property, is on record. Therefore, the only one inference is to be drawn that Kishanrao Deshpande died intestate, in view of Section 3 (1)(g) of the Hindu Succession Act, wherein the term "intestate" is defined. As Kishanrao died intestate, his property shall devolve in accordance with the provisions of the Hindu Succession Act, 1956. Section 8 of the Hindu Succession Act governs the general rule of succession in case of male. Section 8 reads as under:-

8. General rules of succession in the case of males.- The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter :-

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased."

15. Opponent No.1 being grandson of brother of Kishanrao does not fall in class I or Class II of the Schedule of Hindu Succession Act. Even the applicants

and opponent No.3 do not fall in class I of the Schedule of Hindu Succession Act. However, it cannot be ignored that the grandfather of respondent No.1 namely Keshavrao died in 1934. Govindrao died on 20th October, 1982, Abasaheb died on 25th April, 1983 and Kishanrao died on 26th May, 1982. After the death of Kishanrao on 26th May, 1982, the succession opens. On that date, two brothers of Kishanrao namely Govindrao and Abasaheb were alive. Therefore, Govindrao and Abasaheb being brothers of Kishanrao fall in class II Entry No.II of the Schedule of Hindu Succession Act.

16. As no class-I heir was available and only class II heirs in Entry No.II of the Schedule were available, Govindrao and Abasaheb inherited the entire property of Kishanrao equally. As grandfather of opponent No.1 died in the year 1934 i.e. prior to the death of Kishanrao, neither opponent called his father Gunderao – opponent No.2 are entitled to any share in the property of Kishanrao in view of Section 8 read with Section 11 of Hindu Succession Act, 1956. Thus, learned Trial Court was absolutely right while issuing the succession certificate in favour of the applicants and opponent No.2, who are the legal representatives of Govindrao and

Abasaheb.

17. Learned counsel for the appellant has placed reliance on ***Cedric X. Pinheiro Vs. Smt. Josefina Remedios (1998 91 CompCas 99 Bom)***. However, this authority is distinguishable on facts that the fixed deposit receipt was payable to either or survivor . So also, in that case, will was executed by principal holder of the said fixed deposit receipt on 1st December, 1976. However in the case at hand, fix deposit receipt makes it clear that the deposited amount was payable only to Kishanrao Deshpande. So also, he did not execute will issuing instructions regarding disbursement of fix deposit amount. Therefore, after his death, the fixed deposit amount can be disbursed only in accordance with succession certificate.

18. Accordingly, I hold that opponent No.1 or opponent No.2 have absolutely no right in the property of Kishanrao Narayanrao Deshpande. I answer point No.1 in negative.

As to point No.2 :

17. No doubt, opponent No.1 has pointed out that the applicants have one sister namely Prema alias

Premala and opponent No.3 has two sisters and two brothers namely Keshavrao and Digamber. Non-joinder of these legal heirs of Govindrao and Abasaheb does not make any difference as the branches of Govindrao and Abasaheb are properly represented by their legal representatives and this application can be decided even in their absence. Therefore, the application for succession certificate is not bad for non-joinder of necessary parties. I answer point No.2 in negative.

As to point No.3 :

18. As State Bank of Hyderabad never refused the share of applicants in fixed deposit amount left by Kishanrao, but as the applicants were only directed to submit succession certificate, the application filed by the applicants for succession certificate is certainly well within limitation, as held by the Trial Court. I answer point No. 3 accordingly.

As to point No.4 :

19. In view of my findings against point Nos.(2) and (3), as the appellant has no right in the fixed deposit amount left by Kishanrao Narayanrao Deshpande, the order passed by the learned Trial Court issuing

succession certificate in favour of the applicants and opponent No.3 is correct, proper and needs no interference.

20. It follows that the First Appeal fails. Accordingly, First Appeal No. 3649/2016 is dismissed. In view of dismissal of First Appeal, Civil Application No.806/2016 for stay stands disposed of.

Sd/-
[SUNIL K. KOTWAL]
JUDGE

npj/fa3649-2016