

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

WRIT PETITION NO. 9077 OF 2018

Shaikh Kalindar Peer Mohammad and others ... Petitioners
Versus
Harun Nasroddin Shaikh ... Respondent

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Mr. Anand V. Patil-Indrale, Advocate for petitioners.
Mr. S. V. Natu, Advocate for respondent.

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CORAM : M. S. KARNIK, J.

DATED : 6th AUGUST, 2019

PER COURT :-

1. The challenge in this petition filed under Articles 226 and 227 of the Constitution of India is to an order dated 27th April, 2018 passed by the Civil Judge, Junior Division, Karjat in Heir-ship Enquiry Application No. 31 of 2016.
2. The respondent had filed an application for heir-ship certificate under the Bombay Regulation Act, 1927.
3. Learned counsel for the petitioners invited my attention to the genealogy at page 16 of the paper-book. The property in question belongs to Sikandar Shaikh. On account of the death of Sikandar, his wife Aminabee became the successor as Sikandar had no children.

Aminabee had filed an application for grant of heir-ship certificate bearing application No.12 of 1998 and the competent Court granted heir-ship certificate in favour of Aminabee. Said Aminabee by a registered will made a bequeath of the property in favour of the respondent.

4. It would be material to state here that the sole respondent-Harun is the son of Nasroddin Shaikh. Nasroddin is the real brother of Sikandar. The objectors-petitioners are also the children of the other real brother of Sikandar.

5. After demise of Aminabee, the respondent filed an application for heir-ship certificate before the trial Court. This was on the basis of the registered will of Aminabee. The petitioners-objectors filed an application stating that they have equal right in the property as Harun and therefore they should be allowed to contest as necessary parties. The trial Court by the impugned order rejected the application.

6. Learned counsel for the petitioners submitted that the petitioners have already filed suit for partition of the entire properties which includes the suit property. Learned counsel would submit that respondent Harun is their cousin. All are Aminabee's nephews. He would submit that the trial Court was not justified in rejecting the

application as the petitioners-objectors would loose an opportunity to cross examine the respondent. He would submit that even for grant of heir-ship certificate respondent has to prove the will. In his submission an opportunity has to be given to the objectors to contest the grant of heir-ship certificate. Learned counsel for the petitioners relied upon a decision of this Court in the case of Bainabai Vs. Divisional Manager, Life Insurance Corporation of India and others in Civil Revision Application No.68 of 2015 (Nagpur Bench) in support of his submissions. He would urge that this Court has held that the propounder has to prove the execution and contents of the said will. It is in these circumstances he would submit that the objectors are necessary parties and they ought to be given opportunity.

7. Learned counsel for the respondent on the other hand would support the order passed by the trial Court. He invited my attention to the averments made by the petitioners before the trial Court at page 16 of the paper-book. He would submit that in para 5 it is avered by the petitioners that Aminabee is not the sole legal heir of Sikandar. The objectors are therefore objectiing to the title of Aminabee. In any case, he would submit that since the application for heir-ship certificate is made by the respondent, it is for him to establish the execution and contents of the said will. The presence of the objectors is not necessary.

8. I have heard the learned counsel at some length. The application has been made for heir-ship certificate on the basis of will executed by Aminabee in favour of the respondent. The objectors claim to be the children of the real brother of Sikandar, in that capacity claim to have interest. Already a suit for partition is pending. The trial Court has held that the respondent herein on the basis of the will executed by Aminabee has to prove the execution and contents. The trial Court observed that the petitioners have not pointed out on what basis they are entitled to succeed to the property and as to their rights thereon. The trial Court has clarified that under the Bombay Regulation Act, only the heir-ship certificate is to be granted. The trial Court has further observed that, any order passed in the said application for grant of heir-ship certificate will not have any effect on the legal rights of the objectors-third parties.

9. It is a settled law that the burden is entirely upon the applicant to prove the execution and the contents of the will. Moreover, the objectors will always have a right to establish their claim, legal rights in appropriate proceedings. Thus, their rights will obviously not be affected by the heir-ship certificate which may be eventually granted by the trial Court after an inquiry contemplated. It is for the respondent

to prove the execution and contents of the will for the purposes of grant of succession certificate and nothing more.

10. In this view of the matter, I see no reason to interfere with the order passed by the trial Court. The writ petition is therefore dismissed.

[M. S. KARNIK, J.]

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