

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISC.CIVIL APPLICATION NO.208 OF 2017

ARATI VINODKUMAR BALAPURE AND OTHERS
VERSUS
PRABHAWATI BABURAO BALAPURE AND OTHERS

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Advocate for Applicants : Shri Shinde Ram S.
Advocate for Respondent 1 : Shri Jain Vishwajit R. (Kamboj)

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 24, 2019

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PER COURT :-

1. This is an application filed by an unfortunate widow, who has lost her husband at a very young age, when her elder daughter was 4 years of age and her son was 6 months of age.

2. Her husband, suddenly passed on 25.7.2017 at Nandurbar on account of a massive heart attack. It is contended that the approach of respondent No.1 / mother-in-law and respondents 2 and 3 / who are the real brother and sister of the deceased, drastically changed. Various investment policies, which were drawn by the deceased and documents pertaining to such policies, as well as the original income tax pan card and the original bank pass book of the applicant herself, were seized by the brother of the deceased. The papers pertaining to the immovable

properties (flat) purchased by the deceased were also taken into their custody.

3. An application seeking grant of a succession certificate was moved before the learned Civil Judge S.D. at Nandurbar bearing No.81 of 2017 by the mother of the deceased, who is the applicant before the said Court. Another application is filed bearing No.69 of 2017, which is for seeking injunctory orders against the widow.

4. Since, I noticed the various schemes putforth by the respondent No.1 applicant in the Succession Certificate proceedings, I directed the said respondent to produce the said documents in this Court. Learned Advocate for respondents 1 and 2 has fairly produced ten documents in this Court along with a list, out of which Sr. Nos.1 and 3 to 10 are in original form and Sr. No.2 is a photostat copy.

5. The grievance of the applicant No.1 widow is that she has been rendered a destitute and had no option but to move to her present address at Taluka Udgir, District Latur since she had no source of income to support the two children. It is submitted that she got no financial assistance from respondent No.1 or respondent No.2 herein. In order to survive, she had to rely on her aged parents. They survive on the agricultural land, which is owned by the father of the applicant.

6. It is further stated that respondent No.2 has already withdrawn Rs.10,00,000/- under two insurance policies drawn by the deceased before his marriage with the applicant, on the ground that respondent No.2 was the nominee in the said policies. It is seriously apprehended that, by taking advantage of the miseries of the applicant and her residing at a distant place at Udgir, the respondents, who are influential in Nandurbar, intend to deprive the applicant of her legal and legitimate rights.

7. Learned Advocate for the respondents submits, on instructions, that the respondents do not deny that the applicant and her two children, born out of the wedlock with the deceased husband, are Class I heirs. Their right to the policies in their capacity of being the widow and children of the deceased, is not disputed. Her rights flowing from the rights of her husband, if he would have been alive, are also not disputed.

8. It is further added that the mother of the deceased had contributed some amounts, when the deceased drew certain policies, which are placed on record along with the list. The expectation of the mother is that there should be a proper apportionment of the benefits of the policies.

9. Learned Advocate for the widow / applicant submits that the mother of the deceased did not have any employment or any business. She had no source of income. Her husband i.e. the deceased father-in-law of the applicant / widow was a teacher and therefore, respondent No.1 mother is being paid the pension, which her husband was receiving after his retirement. The deceased husband of the applicant was a reputed Radiologist and his income was very high, which is evident from the several policies that he had drawn and had also purchased a highly valued property from JVPD Properties Private Limited. The deceased was provisionally allotted a Flat No.1102 on the 11th Floor being the 9th residential floor above two podiums in Bhagtani Serenity being constructed on land bearing CTS No.63/A/5 and 64/B, 'S' Ward of village Piranjad, Tq. Kurla, Mumbai. It is, therefore, a false plea that the mother of the deceased had contributed to the huge investment of the deceased husband of the applicant.

10. Reliance is placed by the applicants on Section 371 of the Indian Succession Act, 1925, which reads as under:-

"Section 371 : Court having jurisdiction to grant certificate .-

The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found,

may grant a certificate under this Part. "

11. It is submitted that the applicant / widow is residing at Udgir. Other properties of respondent No.1 / mother-in-law like house properties and agricultural land properties, are situated at Killari / Ausa. The house is at Latur. The funeral rites of the deceased husband of the applicant were performed at Killari, which is the native place of the deceased husband of the applicant. The certificate of the Gram Panchayat, Killari and the 7/12 extracts are cited for the said purpose.

12. Learned Advocate for respondent No.1 / mother of the deceased relies upon Section 372 of the said Act, which reads as under:-

"Section 372 : Application for certificate-

(1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:-

(a) the time of the death of the deceased;

(b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the

application is made, then the property of the deceased within those limits;

(c) the family or other near relatives of the deceased and their respective residences;

(d) the right in which the petitioner claims;

(e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and

(f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code, 1860 (45 of 1860).

(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof."

13. It is, therefore, submitted by the respondents that as they all reside in Nandurbar, as the deceased husband of the applicant had died at Nandurbar and the ordinary residence of the deceased was at Nandurbar, there is no requirement for transferring the Succession

Certificate proceedings to Latur, which has the Court of the learned Civil Judge S.D.

14. I find from the policies placed before the Court vide the list of documents, which are taken on record and collectively marked Exhibit "X" for identification, that the name of the applicant Arati, appears as a nominee in the said policies. The cheque book is of deceased husband, indicating the huge payments made by him from his own account. The ICICI pass book indicates that the account was opened in 2016 as the first entry is dated 2.4.2016. Arati is said to be nominated by the deceased, as he got the nomination registered with the said account No.113601502631, at Powai, Mumbai.

15. Learned Advocate for the mother-in-law / respondent contends that the hearing is at a final stage. Learned Advocate for the applicants contends that the say of the widow is yet to be filed. The applicant / widow resides in Udgir. Killari falls in Ausa Taluka of Latur District, which does not have a Court of Civil Judge J.D. which is available at Latur.

16. The respondents have relied upon the judgment of the Uttarakhand High Court, delivered in the matter of Mohinder Kaur Dhillon Vs. Sawinder Kaur Dhillon [(2009) 76 ALR 263 (Utt)]. It was

noted by the Court that the deceased died at Deharadun, was a domicile of Amritsar and the property was situated at Delhi. Hence, the trial Court had rejected the Succession Certificate proceedings, filed by the widow at Deharadun, concluding that the deceased was a domicile of Amritsar and the property was at Delhi. The Uttarakhand High Court, therefore, rejected the claim of the widow.

17. Considering the facts recorded as above and keeping in view that the litigating sides originally belong to Killari in Taluka Ausa, due to which the funeral rites and all ceremonies pursuant thereto, were conducted at Killari, that I find it appropriate to allow this application.

18. In view of the above, this application is allowed in terms of prayer clause (B), which reads as under:-

"(B) The proceedings of Civil Misc. Application No.81 of 2017 pending before Ld. Civil Judge Senior Division, Nandurbar for grant of succession certificate may kindly be transferred to the Ld. Civil Judge Senior Division at Udgir, Dist. Latur for deciding in accordance with provisions of law."

19. All the litigating sides would appear before the Court at Udgir on 15.2.2019. Formal notices need not be issued by the Court.

20. The documents annexed to the list marked as Exhibit "X"

collectively shall be placed in a sealed envelope by the Registry of this Court and shall be transmitted to the Court of the Civil Judge S.D., Udgir, forthwith. Before the said transmission, the learned Advocates representing the applicants and respondents, in this proceedings, are at liberty to approach the Registrar (J) of this Court, who would depute a competent person for preparing the photostat copies of these documents at Sr. Nos. 1 to 4, 9 and 10, to be delivered on payment of requisite charges.

21. The competent Court dealing with Civil Misc. Application No.81 of 2017 shall give due weightage to the aspect of the applicant Arati having been nominated in whichever policies, Bank Accounts or properties at issue, strictly in accordance with law and shall also decide whether any other person can have any share in any property, Bank Accounts or policies in which the widow Arati has been shown to be a nominee. If within the framework of law, it is concluded that Arati being the nominee shall be entitled for the proceeds of the policies / properties / Bank Accounts, the concerned Court shall accordingly make appropriate observations.

22. Learned counsel for the respondents seeks a stay to this order for a period of four weeks. Learned counsel for the applicants opposes the said request on the ground that the parties are to appear on 15.2.2019

before the Court at Udgir. As such, I do not find any reason to entertain the request of the respondent, keeping in view the observations made in this order.

(RAVINDRA V. GHUGE, J.)

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