

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.384/2016

Pandurang Agnu Wadar – Chougule ... Applicant
V/s.
Diwanji Agnu Wadar Chougule & Ors. ... Respondents

Mr. Satyajeet A. Rajeshirke for the Applicant
Mr. Dilip Bodke for the Respondent

CORAM: K.K. TATED, J.
DATED : FEBRUARY 22, 2019

P.C. :

1 Heard. By this Civil Revision Application, the Applicant challenges the order dated 16.10.2014 passed by the learned Additional District Judge – 1 Sangli in Regular Civil Appeal No. 184/2013 setting aside the judgment and order passed in Misc. Civil Application No.38/2006 dated 18.03.2013 whereby a probate was granted in favour of the Applicant.

2 The learned counsel for the Applicant submits that in view of the Division Bench judgment of this court in the matter of ***Nola Jonathan Ranbhise (Smt) Vs. Union of India & Ors. 2014 (3) Bom. C.R. 641***, Regular Civil Appeal No. 184/2013 filed by the Respondent before the District Court itself is not maintainable. He submits that as per the aforesaid judgment of this court, the appeal is maintainable only before the High Court. He relies on para 50 of the said judgment, which reads thus:

“(a) It is hereby declared that sub-sections (2) and (3) of Section 28A of the Bombay Civil Courts Act, 1869 are inconsistent with and repugnant to the provisions of Section 299 of the Indian Succession Act, 1925 and consequently the same stand impliedly repealed. Accordingly, every order made by the District Judge under

the Indian Succession Act, 1925 or every order made by a Civil Judge invested with the powers of a District Judge or a District Court, as the case may be, under the Indian Succession Act, 1925 in terms of sub-section (1) of Section 28A of the Bombay Civil Courts Act, 1869 shall be subject to appeal to the High Court in accordance with the provisions of Code of Civil Procedure, 1908, applicable to appeals;

(b) The impugned judgment and order dated 4.11.2008 passed by the learned District Judge, 10 Pune in Civil Appeal No.167 of 2006 is quashed and set aside and the District Judge at Pune is directed to return the appeal memo in said Civil Appeal No.167 of 2006 for presentation to the High Court with a period of 30 days from today;

(c) Upon return of the appeal memo as aforesaid, the Petitioner is at liberty to present the same before the High Court within 30 days, failing which the judgment and order dated 30.1.2006 passed by the Civil Judge, Senior Division in M.C.A. No.32 of 1999 shall stand confirmed;

(d) It is clarified that the judgments and orders passed by District Courts as first Appellate Courts and this Court as second Appellate Court in terms of sub-sections (2) and (3) of Section 28A of the Bombay Civil Courts Act, 1869, upto the date of this judgment and order shall be regarded as valid, notwithstanding the reasoning and declaration contained in this judgment and order by applying the principle akin to de facto doctrine. However, where such judgment and orders have already been challenged on the ground of inconsistency or implied repeal of the provisions contained in Section 28A(2) and (3) of Bombay City Civil Courts Act, 1865, and such proceedings are pending adjudication, then they shall not be governed by the principles of akin to de facto doctrine.

(e) Rule is, accordingly, made absolute in aforesaid terms;

(f) In the facts and circumstances of the present case there shall be no order as to costs."

3 Hence, the Civil Revision Application deserves to be allowed setting aside impugned order dated 16.10.2014.

4 On the other hand, the learned counsel for the Respondent has fairly states that the appeal should have been filed before the High Court and not before the District court. He submits that the liberty may be granted to the Respondent to prefer an appeal before this court to challenge the judgment and order passed by the learned Civil Judge, Senior Division, Sangli in Misc. Application No.38/2006 dated 18.03.2013 and same to be decided on its own merits.

5 In view of these facts, the following order is passed:

- a. The Civil Revision Application is allowed.
- b. Impugned Order dated 16.10.2014 passed by the learned Additional District Judge – 1 Sangli in Regular Civil Appeal No. 184/2013 is set aside.
- c. Liberty granted to the Respondent, if so desire, to take out appropriate proceedings in view of the judgment in the matter of Nola Jonathan Ranbhise (supra) to challenge the judgment and order passed by the learned Civil Judge, Senior Division, Sangli in Misc. Application No.38/2006 dated 18.03.2013 and same shall be decided on merits.
- d. No order as to costs.

(K. K. TATED, J.)