

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

24 WRIT PETITION NO.8870 OF 2016

1. Sanjay Madanlal Gugale
Age: 49 years, Occu: Business
R/o. Swati Colony, Opp. Vaibhav Hotel,
Burudgaon Road, Ahmednagar,
Dist. Ahmednagar.
2. Rajendra Madanlal Gugale
Age: 47 years, Occu: Business
R/o. Swati Colony, Opp. Vaibhav Hotel,
Burudgaon Road, Ahmednagar,
Dist. Ahmednagar.
3. Deepak Madanlal Gugale
Age: 42 years, Occu: Business
R/o. Nandanwan Colony,
Burudgaon Road, Ahmednagar,
Dist. Ahmednagar.
4. Sau. Mangala Shrikant Gandhi
Age: 50 years, Occu: Household
R/o. Wagholi, Taluka-Haveli,
District-Pune.
5. Smt. Sarasbai Madanlal Gugale
Age: 69 years, Occu: Household
R/o. Swati Colony, Opp. Vaibhav Hotel,
Burudgaon Road, Ahmednagar,
Dist. Ahmednagar.

... Petitioners

VERSUS

Sau. Bebi @ Madhuri Dhananjay Upasani
Age: 44 years, Occu: Household
R/o. Rajwardhan Foods, Opp. K.C. Das,
New Block, 1291, 25-V, Main Lane,
Jayanagar, Bangalore-69.

... Respondent

...
Mr. Gawali Amol K., Advocate for Petitioners
Mr. Ajit M. Gholap, Advocate for Respondent
...

CORAM : MANGESH S. PATIL, J.

DATE : 07.12.2020

ORAL JUDGMENT :

Heard.

2. Rule. Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

3. The petitioners propounding a Will of one Madanlal Dagaduram Gugale dated 01.09.2003 submitted an application before the Court of learned Civil Judge, Senior Division, Ahmednagar making a prayer to the effect that in order to enable the petitioner No.1 to get his name mutated in the City Survey record and the Municipal Corporation record of the properties mentioned to have been bequeathed by late Madanlal Dagaduram Gugale, the petitioners may be issued a probate or a letters of administration. This application was filed on 08.06.2009.

4. The learned Civil Judge Senior Division, by order dated 09.06.2009, observing that he had no jurisdiction to grant probate, directed the application to be registered as an application for issuance

of letters of administration and accordingly, it was so registered. The respondent herein contested that proceeding by filing her Say (Exhibit-16).

5. It appears that the petitioners then filed application (Exhibit-27) dated 24.01.2013 and requested for registering the application as an application for probate. By the impugned order dated 18.04.2016, the learned Judge rejected the application (Exhibit-27), firstly, on the ground that going by the decision of the Supreme Court in the case of **Clarence Pais Vs. Union of India; 2001 AIR (SC) 1151, Bhagwanji Karsanbhai Rathod Vs. Surajmal Anandraj Mehta; 2003 (5) Bom. C.R. 228 and Devidas Kale Vs. Subhsh Pandharinath Thorat; 2009 B.C.I. 172** probate was not necessary in respect of the properties situated at Ahmednagar. He also observed that the petitioners had suffered the order passed on 09.06.2009 refusing to register the application as an application for grant of probate and instead, directing it to be registered as one for issuance of letters of administration.

6. Learned advocate Mr. Gawali Amol for the petitioners submits that the observations and conclusion drawn by the learned Civil Judge, particularly the reasoning part is not legally tenable. The petitioners were merely asking for converting the application as an

application for grant of probate. The decisions referred to by the learned Civil Judge only conclude that a probate is not necessary in respect of the properties situated in Ahmednagar. The question of necessity cannot be read as a prohibition in law in applying for a probate. As far as the delay aspect is concerned, he submits that since inception, the petitioners had requested for treating their application in the alternative even for grant of probate and by the application (Exhibit-27), it was merely requested to treat it as such. He, therefore, submits that the learned Civil Judge could have easily allowed the application and allowed the main proceeding to be converted as a proceeding for grant of probate.

7. Learned advocate Mr. Ajit M. Gholap for the respondent opposes the petition. He submits that the petition suffers from delay and latches. By order dated 09.06.2009, the Court had indirectly refused to register the application as an application for probate and instead, had registered it as an application for grant of letters of administration. Once having suffered that order, the present application (Exhibit-27) was filed after the respondent chose to contest the proceedings. Irrespective of the reasoning in the impugned order, no fault is committed by the learned Civil Judge in refusing to register the application as an application for probate.

8. I have carefully gone through the impugned order and papers and have considered the rival submissions. It is a matter of record that the application was filed with an alternative prayer to treat the application for grant of probate and for issuance of letters of administration. The learned Civil Judge holding that he had no jurisdiction to grant probate directed it to be registered as an application for issuance of letters of administration. It is also apparent that the respondent filed her written statement (Exhibit-16) contesting the application on 05.03.2010. It appears that the petitioners were clearly aware about the contest being put by the respondent to the Will being propounded by them. No immediate steps were thereafter taken till filing of this application (Exhibit-27) on 24.01.2013 for converting it for grant of probate.

9. As far as reasoning part is concerned, obviously, the decisions (supra) merely lay down that a probate is not necessary in respect of the properties situated at Ahmednagar. It does not lay down any prohibition for applying for a probate even in respect of the properties situated in Ahmednagar. Therefore, this reasoning resorted to by the learned Judge is clearly illegal and arbitrary.

10. However, since initially the learned Civil Judge had specifically observed that he was not having jurisdiction to grant

probate that he had directed the application to be registered as an application for letters of administration. Apart from the fact of delay and laches in making a request for converting the proceeding, it is also conspicuous that under enabling provision contained in Section 28 A (1) of the Bombay Civil Courts Act, 1869, this High Court has invested all Civil Judges, Senior Division with all the powers of a District Judge to take cognizance of any contested proceeding under Indian Succession Act, 1925, arising within the local limits of their respective jurisdiction that may be transferred to them by their respective District Judges [Bombay High Court Civil Manual Chapter XIV Para 305. (ii)]. If this is so, when the application for probate cannot be directly received and entertained by the learned Civil Judge, Senior Division, no fault can be found with the impugned order refusing to convert the application as an application for grant of probate, may be relying upon the earlier order dated 09.06.2009.

11. Consequently, keeping aside the reasoning part resorted to by the learned Civil Judge in the impugned order, no exception can be taken to his refused to convert the application for letters of administration as the one for grant of probate.

12. In the result, the writ petition is liable to be dismissed and is accordingly dismissed. Rule is discharged.

(MANGESH S. PATIL, J.)