

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

936 WRIT PETITION NO.4862 OF 2019

DROPADABAI TULSHIDAS KURHADE PATIL AND OTHERS
VERSUS
BHARATI TULSHIDAS KURHADE AND OTHERS

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Mr. P.V. Barde, Advocate for the petitioners.
Mr. Amol Gaikwad, Advocate for respondent Nos.1 to 4.

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CORAM : **AVINASH G. GHAROTE, J.**

DATE : 30-07-2021.

ORDER :

1. Heard Mr. Barde, learned Counsel for the petitioners, who takes exception, to the judgment dated 21.09.2016, passed by Civil Judge, Senior Division, Gangakhed in M.A. No. 99/2014, whereby the claim of the petitioners / applicants, that the applicant No.1, was the wife of the deceased Tulshidas Kurhade and applicants 2 and 3 were his daughter and son respectively, has been negated, in proceedings under the Bombay Regulation VIII of 1827. It is contended, by Mr. Barde, learned Counsel for the petitioners, that the proceedings under the Bombay Regulation VIII of 1827 are summary in nature, and in case any complicated or difficult question arises between the parties, the Judge may suspend proceedings until the question has been tried by a regular suit instituted by one of the parties. He submits, that since contradictory claims were made by applicant No.1 as well as non-applicant No.1, of being the legally

wedded wife of deceased Tulshidas Kurhade, the Judge, ought to have suspended the proceedings in the application for a certificate, until the question was raised and tried by a regular suit instituted by one of the parties. Not having done so, according to him, amounts to a failure calling for the setting aside of the said judgment dated 21.09.2016. Same position, according to him, would accrue in respect of the judgment in appeal by the District Judge-2, Parbhani dated 04.10.2018.

2. By application bearing M.A. No. 99/2014 filed under the Bombay Regulation VIII 1827, applicant No.1 Dropadabai, claimed herself to be the wife of one Tulshidas Kurhade, applicant No.2 Sangita as his daughter and applicant No. 3 Sandeep to be his son. As against this, non-applicant No.1 Bharati also claimed herself to be the wife of Tulshidas and non-applicant Nos.2 to 5 as his children. In order to establish her claim, the applicant No.1 has filed a simplicitor affidavit taking the said stand and nothing else. Not a single document, including, either a marriage card, voter identity card, PAN card, Ration card, or for that matter, the date of birth certificates of applicant Nos.2 and 3, has been placed on record, to substantiate the plea raised in the affidavit. Neither any other person, who could claim to have witnessed the marriage, has been examined. In fact, except for applicant No. 1, and her son applicant No. 2 Sandeep, no one has been examined on her part. Based upon such testimony, the learned trial Court, has recorded his findings in the negative regarding the marriage of applicant No.1 or

the parentage of applicant Nos.2 and 3. The Appellate Court, has also concurred with the findings of the Lower Court, in view of the fact that except for the bare singular statement of applicant No.1 Dropadabai, there is absolutely nothing on record.

3. In light of the facts stated above, the findings therefore, cannot be interfered with. The contention by Mr. Barde, that since a complicated or difficult question arose, the Judge ought to have suspended the proceedings, in view of the contrary claims made by applicant No.1 and the non applicant No.1, till such time, the question was tried by a regular suit instituted by one of the parties. In view of the fact, that the proceedings, were initiated before the Civil Judge, Senior Division, Gangakhed, who has recorded the evidence as permissible under the first part of Regulation IV and was also empowered to look into such other evidence as would be adduced by the parties, the second part would come into picture, only if there was a finding rendered by the Court that a complicated or difficult question had arisen. In the facts of the case, since no such finding has been rendered, the question of suspending the proceedings, till the non-existent question had been tried by a regular suit instituted by one of the parties, did not arise. In that view of the matter, I do not find any merits in the petition. The same is, therefore, dismissed.

(AVINASH G. GHAROTE, J.)