

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.501 OF 2011

SANGITA W/O SITARAM JADHAV AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Advocate for Appellants : Mr. R. V. Gore
AGP for Respondent No.1 : Mr. B. V. Virdhe
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 13/08/2021

ORDER :

1. Heard learned Advocate Mr. R. V. Gore for appellants and learned AGP Mr. B. V. Virdhe for respondent No.1-State.
2. Present appeal has been filed by the original applicants in Miscellaneous Application Requiring Judicial Inquiry No.852 of 2008. They had filed application for grant of heirship certificate in their favour. The application came to be allowed by the learned 5th Joint Civil Judge, Senior Division, Aurangabad and applicants are held to be entitled to get a legal heirship certificate by deceased Sitaram Chadu Jadhav regarding his pensionary benefits. Thereafter, objectors had approached before the District Court, Aurangabad by filing Regular Civil Appeal No.165 of 2010. It was heard by learned District Judge-3,

Aurangabad and it came to be allowed on 26-11-2010. The appellants as well as the respondents to the said appeal were held to be the heirs left by deceased Sitaram Chandu Jadhav.

3. Learned Advocate appearing for the appellants-original applicants submitted that the learned Appellate Court erred in considering the objection filed by the appellants to the appeal. The family pension benefit could be given to the applicants only and it was the relief claimed by them before the lower Appellate Court. Now they are deprived of getting pensionary benefits. Substantial questions of law are arising in this case.

4. At the outset, it is to be noted that the proceedings before the learned 5th Joint Civil Judge Senior Division is the application for grant of heirship certificate which was under the Bombay Regulation Act. The applicants therein were not claiming succession certificate under the Indian Succession Act. Therefore, the inquiry that was contemplated and limited in application for grant of heirship certificate is, who is the heir left by the deceased or who are heirs left by the deceased. The objection was filed by the appellants in Regular Civil Appeal No.165 of 2010 before the learned Senior Division itself, however, their names have not been even disclosed

on the title of the application. By filing their written objection, they had contended that original applicant No.1 is not the legally wedded wife of deceased Sitaram and the objectors were claiming to be the only legal heirs left by deceased Sitaram. A very cryptic order is passed by the learned Civil Judge, Senior Division and he arrived at the conclusion that only the applicants are the legal heirs. In fact, when the objection has been raised, it ought to have been gone into as it a suit and then the status ought to have been decided. However, taking into consideration the limited inquiry that is expected and the fact that only for the purpose of pensionary benefits, heirship cannot be granted as per the Bombay Regular Act. It cannot be disputed that the District Court could have gone much into further details. For taking pensionary benefits, the remedy is elsewhere and, therefore, the decision arrived at by the First Appellate Court appears to be correct. No substantial question of law is arising in this case and, therefore, the second appeal stands dismissed.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA
J

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VIRENDRA J
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