

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5268 OF 2020

Sharad Dajisaheb Jawalkar,
Age : 39 years, Occ. Agri.,
r/o. Patoda, Tq. Ambajogai,
Dist. Beed

..Petitioner

Vs.

1. Smt. Meerabai Prabhakar Joshi,
Age : 70 Occ. Household,
r/o. Patoda (M), Tq. Ambajogai,
Dist. Beed

2. Geetanjali Prabhakar Joshi,
(Geetanjali d/o. Madhukar Joshi @
Geetanjali w/o. Latpate)
Age : 34 years, Occ. Household,
r/o. Patoda (M), Tq. Ambajogai,
Dist. Beed

..Respondents

Mr.Prasad B. Vaidya, Advocate h/f. Mr.S.S.Kulkarni, Advocate for
petitioner

Mr.V.M.Chate, Advocate for respondent nos.1 and 2

**CORAM : R.G. AVACHAT, J.
RESERVED ON : JANUARY 27, 2021
PRONOUNCED ON : FEBRUARY 03, 2021**

JUDGMENT :-

Heard.

2. Rule. Rule is made returnable forthwith. With the consent of learned counsel for the parties, the petition is heard finally.

3. The challenge in this Writ Petition is to the order dated 30.06.2020 passed by the Court of Civil Judge, Senior Division, Ambajogai, below application (Exh.61) in Misc. Civil Application No.150 of 2015. By the impugned order, the application preferred by the petitioner/objector for deleting the name of Smt.Geetanjali Prabhakar Joshi from the array of the application, came to be rejected.

4. The facts, necessary to decide present Writ Petition, are as follows:-

One Prabhakar Dattatray Joshi died on 09.06.2013. Smt.Meerabai and Smt.Prabhadevi (deceased) claimed to be widows of deceased - Prabakar. Both Smt. Meerabai and Smt.Prabhadevi, therefore, preferred an application for grant of heirship certificate under Bombay Regulation Act, 1827. It appears that the petitioner herein appeared in the said

proceedings/application and raised objection. According to him, deceased - Prabhakar executed a will in his favour. Pending the application, Prabhavati passed away. Smt. Geetanjali Prabhakar Joshi (respondent no.2 herein) preferred an application to bring herself on record of the said application in the capacity as a legal representative. According to her, Prabhavati had adopted her. The trial Court, vide order dated 13.09.2016, allowed the application. Respondent no.2, thus, came on record as one of the applicants claiming heirship certificate.

5. The petitioner herein moved application (Exh.61) for deletion of Geetanjali from the array of the application, on the ground that deceased - Prabhavati had claimed heirship certificate in her personal right. On Prabhavati's death, the application for heirship certificate stood abated since the right to claim heirship certificate as widow of deceased – Prabhavati, did not survive.

6. The trial Court rejected the application on the ground that Geetanjali, in her application (Exh.22), had sought

to bring herself on record in her individual capacity and not as a legal representative of deceased - Prabhavati. According to the trial Court, Geetanjali claimed to be daughter of deceased - Prabhakar, hearing of the application commenced, etc.

7. Learned counsel for the petitioner would submit that since Smt.Prabhavati had sought for heirship certificate as widow of deceased - Prabhakar, Geetanjali could not have a right to come on record of the application as legal representative of Late Prabhavati. Learned counsel meant to say that personal cause of action dies with the person. Learned counsel made very many submissions, those need not be referred to, since a very short issue has been involved in this matter.

8. Learned counsel for the respondent would, on the other hand, submit that the trial Court has passed a well reasoned order. According to him, there is no evidence to indicate the petitioner to be anyway entitled to inherit property of the deceased - Prabhakar. The application preferred by the

petitioner for grant of probate has been dismissed in default. Co-widows can claim heirship certificate. Learned counsel for respondent placed reliance on Section 4 of Hindu Marriage Act, 1955 and Hindu Succession Act, 1956. He also brought to my notice Rule 1 of Section 10 of Hindu Succession Act, 1956, to submit that if there are more widows than one, all the widows together shall take one share. Learned counsel also relied on following authorities:-

1. Mrs. Prabha Bhasin Vs. The State, AIR 1989 DELHI 244;
2. Group Grampanchayat Vs. Sunanda Shamrao Bandishti and ors., 2011(5) Bom.C.R. 162;
3. Aloysius Manuel Dsouza and ors. Vs. Mary Kamala William Manuel Dsouza and ors., 2006(6) Bom. C.R. 56

9. Prabhakar died on 09.06.2013. Smt. Meerabai and Smt. Prabhavatibai (deceased) claimed to be widows of deceased - Prabhakar. Both of them together, therefore, filed application for grant of heirship certificate in their favour under Bombay Regulation Act, 1827. The application is conspicuously

silent to state, whether both Smt. Meerabai and Prabhavatibai had married deceased - Prabhakar before 1956. It is, therefore, for the trial Court to decide, whether both the widows or only one of them is/was entitled for grant of heirship certificate.

10. Pending the application, Prabhavati died on 21.05.2016. On her demise, Geetanjali preferred application (Exh.22) to bring herself on record as applicant. Copy of said application is on record. It has been averred in paragraph 3 of the application that, deceased - Prabhavati adopted Geetanjali on 25.09.2013. Geetanjali, thus, became a legal heir on death of Prabhavati and deceased - Prabhakar as well. In short, from the averments of the application moved by Geetanjali, it is very much clear that she has claimed heirship certificate in the capacity as a daughter of deceased - Prabhakar and Prabhavati.

11. It is true that the claim of Prabhavati of heirship certificate is personal one. Prabhavati claimed to be a widow of the deceased - Prabhakar. In her capacity as widow, she claimed heirship certificate. On her demise, the right to claim

heirship certificate as widow of Prabhakar no longer survives. The question is whether Geetanjali could claim to be daughter of deceased – Prabhakar. Admittedly, Prabhakar predeceased Prabhavati on 09.06.2013. Geetanjali claimed to be an adopted daughter. Geetanjali has specifically averred in paragraph 3 of her application (Exh.22), that Prabhavati, during her lifetime, adopted Geetanjali on 25.09.2013 i.e. after death of Prabhakar. Section 8 of Hindu Adoptions and Maintenance Act, 1956 ("the Act", for short) speaks of capacity of a female Hindu to take in adoption. Any female Hindu who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption, provided that if she has a husband living, she shall not adopt a son or daughter except with the consent of her husband.

12. In the case in hand, Prabhakar, husband of Prabhavati, had already passed away before she, allegedly, adopted Geetanjali. Sub-section (4) of Section 14 of the Act reads: where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child.

13. Since deceased – Prabhakar died on 09.06.2013 and it is the claim of Geetanjali that she has been adopted by Prabhavati on 25.09.2013, Geetanjali cannot claim relationship as a daughter of deceased – Prabhakar by virtue of her adoption by Prabhakar's widow – Prabhavati. Therefore, on her pleading in the application (Exh.22), she is not entitled to claim heirship certificate. The trial Court, therefore, ought to have allowed the application (Exh.61) moved by present petitioner for deletion of Geetanjali from the array of the application for grant of heirship certificate.

14. Needless to mention that Geetanjali would be at liberty to file a substantive suit to agitate her claim.

15. In the result, the Writ Petition succeeds. The impugned order dated 30.06.2020 passed by learned Civil Judge, Senior Division, Ambajogai, below application (Exh.61) in Misc. Civil Application No.150 of 2015, is set aside. The application (Exh.61) stands allowed. Rule is made absolute accordingly.

[R.G. AVACHAT, J.]