

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

CIVIL REVISION APPLICATION NO. 90 OF 2018

Dasopant Digamberrao Goswami Died by LRs ...Applicants

Versus

Mangalbai Vilas Goswami and Anr. ...Respondents

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Mr. Vivek V. Bhavthankar, Advocate for Applicants

Mr. Sachin S. Deshmukh, Advocate for Respondents No. 1
and 2

.....

CORAM : R. G. AVACHAT, J.

DATE : 01-03-2021.

ORDER :

01. The challenge in this Revision Application is to the Judgment and Order dated 28.2.2018 passed by learned District Judge-4, Beed in Regular Civil Appeal No. 69/2009. By the impugned Judgment and Order, the appeal has been allowed and the Order rejecting the Miscellaneous Civil Application No. 70/2000 was set aside. The application moved for grant of heirship certificate came to be allowed.

02. Respondents claimed to be class I heirs of deceased Vilas Goswami, who died on 21.4.2000. The respondents, therefore, preferred application, being

M.C.A. No. 70/2000, for grant of heirship certificate. Dasopant Digamberrao Goswami (deceased) appeared in the said proceedings and contested the same. He claimed to be real brother of deceased Vilas. He denied the respondents (applicants) to be class I heirs of the deceased Vilas. Learned Civil Judge, Senior Division, Ambajogai, rejected the said application. The respondents, therefore, preferred the appeal, R.C.A. No. 69/2009. The appeal came to be allowed. The respondents have been recognized as legal heirs of deceased Vilas Goswami. Heirship certificate was directed to be issued in their favour.

03. This revision application has been filed by legal representatives of Dasopant Goswami, who had appeared in the proceedings (M.C.A. 70/2000) and contested the same.

04. Shri V.V.Bhavthankar, learned Counsel would submit that Shri Dasopant passed away during pendency of Regular Civil Appeal 69/2009. Without bringing on record legal representatives of Dasopant, the appeal came to be decided. The decision in appeal is, therefore, non est.

05. Shri Sachin S. Deshmukh, learned Counsel for the

respondents would, on the other hand, submit that the legal representatives of Dasopant were parties to the appeal. On his request Record and Proceedings of the Civil Appeal was called for. It is found that the legal representatives of Dasopant were brought on record of the memorandum of appeal. Perusal of the impugned judgment passed in the said appeal indicates that legal representatives of deceased Dasopant contested the appeal. It, therefore, can not be said that the judgment in the appeal has been passed against a dead person and is, therefore, a nullity.

06. I have perused the impugned Judgment. Before the Appellate Court, there was clinching and reliable evidence to suggest that the respondents herein are class I heirs of deceased Vilas Goswami. The respondent No. 1 is the widow of Vilas, while respondent No. 2 Yogesh is their son. The appellate Court has, therefore, rightly directed to issue heirship certificate in their favour.

07. The learned Counsel for the revision applicant would submit that on the basis of heirship certificate, the respondents have got mutated their names in municipal / city survey record of certain house

properties. According to him, the said properties belong to a public charitable trust. The respondents can not get any right, title and interest in any immovable property only on the basis of heirship certificate.

08. The learned Counsel for the respondents does not dispute legal position that grant of heirship certificate does not establish a right of the party in property of the deceased by itself. The Division Bench of this Court in case of **Aloysius Manuel Dsouza and Ors V/s Mary Kamala William Manuel Dsouza**², 2006(6) Bom. C.R. 56(O.S.) has held that :

The grant of heirship certificate does not establish the right of a party in property of the deceased by itself. The right, if any, of a person claiming ownership in the property of the deceased are not taken away by grant of an heirship certificate to an heir. On the other hand, Clause 7 makes it clear that the heirship certificate holder is accountable to all persons having an interest in the property for the acts done by him. Based on the heirship certificate simplicitor the heirship certificate holder cannot be said to have acquired any right, title or interest in the estate of the deceased.

Moreover, this Court, vide its order dated 21.8.2014 passed in **Writ Petition No. 2177 of 2014**, has

observed that :

The position of law that emerges from the above provisions is that, an heirship certificate does not bestow the status of an heir upon a person. Grant of such a certificate is only a formal recognition of his existing status as an heir. An heir or executor or legal administrator, by his such status, can assume management of the property of the deceased even without a formal recognition by the Court. A person may obtain heirship certificate in any of the three situations i.e. (i) if he so desires (ii) where his right as an heir is disputed, and (iii) in order to give confidence to the persons in possession of or indebted to the estate and to deal with them. Thus grant of heirship certificate is solely, for the convenience of the heir. Beyond that it is of no significance. The rules also indicate that, it is mandatory for the Court to issue an heirship certificate, if after publication of citation, no objector comes forward within one month from the date of publication. In that case, the Court shall forthwith receive such proof as may be offered of the right of the person making the claim, and if satisfied shall grant a certificate in the prescribed form declaring him the recognized heir of the deceased. The scope of such enquiry is limited to ascertain the claim of heirship of the applicant. The petitioner's claim and the impugned order are required to be appreciated against the above legal position.

09. The respondents being class I heirs of deceased Vilas Goswami, have rightly been granted heirship certificate in recognition of their relationship with the deceased. No interference with the impugned judgment and order is, therefore, called for.

10. Needless to mention that the grant of heirship certificate in the name of respondents *per se* would not establish their right in any property of the deceased.

11. The application fails. The same is, therefore, dismissed.

[R.G.AVACHAT]

JUDGE

Dahibhate/-