

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 2211 OF 2021

1. Suhas Rangrao Turuke
Age 24 years, Occ.: Agriculture & Business,

2. Omkar Raghunath Turuke
Age 20 years, Occ.: Education,
Both R/at. Unchgaon, Taluka – Karveer,
District – Kolhapur.

..Petitioners

Vs.

1. Rangrao Bhiva Turuke
Age 78, Occ.: Agriculturist,

2. Raghunath Bhiva Turuke
Age 50, Occ.: Agriculturist,
1 & 2 R/at.: Mangeshwar Galli,
Main Road, At-Po-Uchgaon,
Tal-Karvir, District – Kolhapur.

3. Sonabai Ravsaheb Dhotre
Age 58, Occ.: Agriculturist,
R/at.-PO-Valivade, Tal-Karveer,
District – Kolhapur.

4. Savitri Namdev Mane
(Since deceased through legal heirs)
A. Raju Namdev Mane
Age 35, Occ.: Business,

B. Lakhnan Namdev Mane
Age 32, Occ.: Business,

Both R/at. Valivade, Tal-Karveer
District – Kolhapur.

..Respondents

Mr. Drupad Patil a/w. Mr. Balasaheb G. Ligade, for the Petitioners.
Mr. Paraag Tilak, for the Respondent Nos.1 to 4(A) and (B).

CORAM : C.V. BHADANG, J.
DATE : 6 SEPTEMBER 2021

Judgment :

. Rule made returnable forthwith. The learned counsel for the Respondents waives service. Heard finally by consent of the parties.

2. By this Petition, the Petitioners are challenging the order dated 2 February 2021 passed by the learned Civil Judge, Senior Division, Kolhapur in Dainik Register No.191/2021. By the impugned order, the aforesaid Petition for grant of probate, filed by the Petitioners under Section 276 and 278 of the Indian Succession Act, 1925 has been rejected as not maintainable. The Petitioners have filed the said Petition for grant of probate / letters of administration in respect of a Will dated 9 March 2020 executed by Late Anubai Bhiva Turuke, in respect of the agricultural lands situated at Village Usgaon, Tehsil Karvir, District Kolhapur. It appears that the office of the learned Civil Judge, Senior Division raised objection to the

maintainability of the Petition, in view of the decision of this Court in *Vishnu Ramchandra Undage Vs. Ganpati Ramchandra Undage & Ors.*¹

3. The learned Trial Court has upheld the objection and has found that the Court has no jurisdiction to entertain the Probate Petition.

4. I have heard the learned counsel for the parties.

5. Indisputedly, the properties which are subject matter of the Will, in respect of which probate is sought, are situated at Village Usgaon within the territorial jurisdiction of learned Civil Judge, Senior Division. The reliance placed by the learned Trial Court on the decision of this Court in *Vishnu Undage* to my mind is misplaced. In the said case, Respondent Ganpati Undage had filed a Suit for partition in which the Petitioner Vishnu Undage was Defendant No.3. The Petitioner remained absent and the Suit proceeded exparte against him. The Suit was eventually decreed and a Preliminary Decree was passed. Thereafter, Ramchandra Undage who is the father of the Petitioner and one of the Defendants in the Suit died on 2 October 2000. The Petitioner on the basis of a registered Will dated 16 August 1996 executed by Ramchandra in his favour, claimed that the share allotted to Ramchandra be allotted

¹ 2006(2) ALL MR 204

to him. The Executing Court found that the Will could not be acted upon in the absence of a probate. The Executing Court found that the Will was covered by Section 213 of Indian Succession Act. That order was subject matter of challenge before this Court. This Court found that the Will was not covered by Section 213 r/w. Section 57 of the said Act. In other words, this Court found that a conjoint reading of Section 213(2) and Section 57 indicates that ordinarily no right as executor or legatee can be established unless a Court of competent jurisdiction grants probate of the Will. However, it applies to the cases of Wills made by Hindus where such Wills are covered by Clause (a) and (b) of Section 57. This Court held that those Wills which fall outside clauses (a) and (b) of Section 57 will not require probate.

6. Section 57 which is relevant for the purpose reads thus-

Section 57 – Application for certain provisions of Part to a class of Wills made by Hindus, etc. - The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply-

(a) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant – Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay ; and

(b) to all such Wills and codicils made outside those territories and limits so far as relates to

immovable property situate within those territories or limits; and

(c) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b);

Provided that marriage shall not revoke any such Will or codicil.

7. It is in these circumstances, it was held that the property which was situated at Kolhapur and being outside the Ordinary Civil Jurisdiction of the High Court, there was no need to obtain probate.

8. In my considered view, a distinction has to be made between the existence of the jurisdiction to entertain the Petition for grant of probate / letters of administration and a need for obtaining of such probate. The decision in the case of *Vishnu Undage* is on the later point.

9. Paragraph 305 of the Civil Manual which is relevant for the purpose reads thus-

305. (i) Under Section 265 of the Indian Succession Act, 1925, the High Court has appointed all Civil Judges to act for the District Judge as delegates to grant probate and letters of administration in non-contentious cases arising within the local limits of their respective jurisdiction.

(ii) In exercise of the powers conferred by Section 28-A(1) of the Bombay Civil Courts Act (XIV of 1869), the 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.

(iii) In exercise of the powers conferred by Section 28-A(1) of the Bombay Civil Courts Act (XIV of 1869), the High Court has invested all Civil Judges (Junior Division) with all the powers of a District Judge in the matter of issuing Succession Certificate limited to debts and securities to the extent of their pecuniary jurisdiction.

It can thus be seen that under Section 265 this Court has invested the Civil Judges, Senior Division and Civil Judges, Junior Division as delegates of the District Judges to grant probate / letters of administration as indicated therein.

10. The learned counsel for the Petitioners has brought to my notice the decision of Division Bench of this Court in Civil Reference No.1/2017 in P. P. Sharma¹ (Reference forwarded from 7th Civil Judge, Senior Division, Kolhapur) decided on 5 June 2017 in which the Division Bench has held that there is no inconsistency or repugnance between Section 28-A(1) of the Maharashtra Civil

¹ 2017(4) Mh.L.J.748

Courts Act, 1869 and Section 265, 272, 286 and 295 of the Indian Succession Act, 1925.

11. In the circumstances, the impugned order cannot be sustained and is accordingly set aside. Dainik Register No.191/2021 is hereby restored to the file of learned Civil Judge, Senior Division, Kolhapur for appropriate registration and for disposal on its own merits and in accordance with law. Needless to mention that this Court has not examined the merits of the claim for grant of probate / letters of administration.

12. In the result, the following order is passed.

ORDER

1. The Petition is allowed.
2. The impugned order dated 2 February 2021 is hereby set aside.
3. Dainik Register No. 191/2021 is restored to the file of learned Civil Judge, Senior Division, Kolhapur for disposal according to law.

4. Rule is made absolute in the aforesaid terms,
with no order as to costs.

C.V. BHADANG, J.