

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4327/2021

Sanjaykumar Parmanand Asati ..Versus... Smt. Pushpa Ashokkumar Asati

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. M.R.Joharapurkar, Advocate for petitioner
Mr. R.M.Sharma Advocate for Respondent

CORAM : AVINASH G. GHAROTE, J.

DATE : 20/12/2021

Heard Mr. Joharapurkar, learned counsel for the petitioner and Mr. Sharma, learned counsel for the respondent.

It is contended by the learned counsel of the petitioner that since the proceedings for legal heirship certificate has been filed by the respondent bearing M.J.C. No. 49/2020, the same ought to be stayed or transferred to the Court in which the substantive suit filed by the petitioner, being R.C.S No. 46/2020 is pending. He criticizes the impugned orders of the learned Trial Court on Exh. Nos. 15 and 17 rejecting the same and submits that since the grant of a legal heirship certificate does not determine the legal right to the property, it was necessary for the Courts below to have either transferred the suit to the Court which was deciding R.C.S. No. 46/2020 or stayed the proceedings of M.J.C. No. 49/2020 till the decision of R.C.S. No. 46/2020.

Mr. Sharma, learned counsel for the respondent opposes the same and contends that since the proceedings under the Bombay Regulation VIII of 1927 do not determine the title, any findings rendered in R.C.S. No. 46/2020 would be binding upon and would prevail over what has been determined while granting the legal heirship certificate and therefore there was no reason either to transfer the proceedings or stay them.

A perusal of Regulation No. VII of the Bombay Regulation VIII of 1927 clearly indicates that while determining the entitlement for grant of a certificate, the Court does not determine any right to the property. What is determined as has been held in **Group Gram Panchyat, Sasavane vrs. Sunanda Shamrao Bandishti and ors; 2011 (2) Mh.L.J. 424**, by relying upon the Division Bench judgment in the case of **Aloysius Manuel D'souza vrs. Mary Kamla William, 2006 (6) Bom. C.R. 56**, is as under;

“6. Interpreting the Regulation, in **Aloysius Manuel D'souza and ors vrs. Mary Kamala William Manuel D'souza, 2006 (6) Bom. C.R. 56**, a Division Bench of this Court has held that the grant of heirship certificate does not establish the right of a party in a 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 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 simpliciter the heirship certificate holder

cannot be said to have acquired any right, title or interest in the estate of the deceased.”

It is thus clear that mere grant of heirship certificate does not establish the right of such a party in a property of the deceased by itself. It would be thus material to note that considering that R.C.S.No. 46/2020 filed by the petitioner is already pending, in which the plaintiff/petitioner claims under Will of deceased Ashokkumar, in case the finding is rendered in the said suit regarding the legality and validity of the said Will, the same would bind the respondents herein even if a legal heirship certificate may have been granted in their favour in M.J.C. No. 49/2020. It is not in dispute that all the persons who are party to M.J.C. No. 49/2020 are also parties to R.C.S. No. 46/2020, which being the case, any findings rendered in R.C.S. No. 46/2020 would equally bind them.

Considering the above position, I do not find any infirmity in the impugned orders, as the two proceedings can go on simultaneously and ultimately what would prevail and would be binding upon the parties, would be the decision rendered in R.C.S. No. 46/2020. The petition is therefore without any merit and the same is accordingly dismissed.

JUDGE

rvjalit

Digitally sign by RAJESH
VASANTRAO JALIT
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Signing Date: 21.12.2021 11:52