

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

**CIVIL APPLICATION (CAO) NO. 2271/2018 IN CIVIL APPLICATION (L) NO. 20/2018**  
**IN OFFICIAL LIQUIDATOR REPORT NO. 15/2016 IN COMPANY PETITION**  
**NO. 05/2001**

Gopal s/o Brijmohan Jhunjunwala and others V/s The Official Liquidator.

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

Court's or Judge's Orders

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Shri R.L. Khapre, Senior Advocate with Shri D.R. Khapre, Advocate for applicants.  
 Dr. Shri Anjan De, Advocate for Respondent (Official Liquidator)

**CORAM : S.M. MODAK, J.**

**DATE : 06/10/2021.**

1. Heard learned Senior Advocate Shri R.L. Khapre for the applicants and learned Advocate Shri Anjan De for the Official Liquidator.

2. The sale of Plot No. 144 situated at Taluka and District Akola was conducted and one Smt Gomatibai Brijmohan Jhunjunwala was the bidder. However, she expired on 03/06/2018. Copy of death certificate is filed on record. The sale could not be confirmed in her favour.

3. These applicants have bidded for various properties belonging to M/s Akola Oil Industries Limited in Liquidation. Due to the non-deposit of the consideration, their bids could not be confirmed and they were canceled. Even though now, the applicant-Gopal Brijmohan Jhunjunwala and his son applicant No.2-Suraj Gopal Jhunjunwala wants sale-deed to be executed in [Civil Application No.481/2021] this Civil Application No. 2271/2018 was filed by them along with four others i.e.

applicant Nos. 3 to 6 who were the bidders for different plots of land. It was not finalized. They have been joined as they were interested in adjusting for the earnest deposit made by them while confirming the sale in respect of plot No. 144.

4. There is Civil Application No.20/2018 pending for passing necessary orders, containing various reliefs. It also includes adjustment of the additional consideration. Both of them have submitted to decide the application for direction to execute the sale-deed first and this application to be decided later on.

5. In view of the filing of Civil Application No. 481/2021 by applicant No.1-Gopal Brijmohan Jhunjhunwala and applicant No.2 Suraj Gopal Jhunjhunwala only, the present civil application No. 2271/2018 is considered only for applicant No.1-Gopal Brijmohan Jhunjhunwala and Applicant No.2-Suraj Gopal Jhunjhunwala. In view of the above position, this application is restricted only to applicant No.1 Gopal Brijmohan Jhunjhunwala and Applicant No.2-Suraj Gopal Jhunjhunwala.

6. This Court on 07/12/2018 was pleased to grant time to Official Liquidator to file reply. Copy of death certificate of Gomatibai is filed on record. So also, a copy of the registered Will dated 19/05/2018 and registered on 20/08/2018 is filed on record. This belongs to the deceased Gomatibai. As per that Will, she has bequeathed the right to purchase the land bearing Plot No. 144 to applicant No.1- Gopal S/o Brijmohan Jhunjhunwala and Applicant No.2-Suraj s/o Gopal Jhunjhunwala. It find place

in para No.10 of the Will and on internal page No.5. She has described this property at Property No.10 in the said Will.

7. In the reply filed by the Official Liquidator, there is an opposition that the Will needs to be probated. The learned Senior Advocate Shri R.L. Khapre relied upon the judgment in the case of *Kanta Yadav Vs Om Prakash Yadav and others*<sup>1</sup> the Hon'ble Supreme Court has interpreted the provision of Section 213 and Section 57 of the Indian Succession Act. It is true that an executor and legatee can establish his right only when probate of the Will is granted in his favour as per the provisions of Section 213 of the Indian Succession Act. At the same time, it is true that as per the provisions of Section 213 (2) of the said Act, the provisions are not applicable when Wills are made outside the limits of the ordinary original civil jurisdiction of this Court, of Calcutta High Court and Madras High Court. Will in this case is registered with Sub-Registrar, Akola. So it is outside the ordinary original jurisdiction of this Court. In view of that, this Court presumes that probate is not required. These observations are made only by considering the controversy raised in this application.

8. In addition to the above documents, the applicant has also relied upon heirship certificate granted by the 2<sup>nd</sup> Joint Civil Judge, Junior Division, Akola in M.J.C. Case No. 50/2021. It is submitted that this heirship certificate was obtained as there was a demand made by the Official Liquidator as per the letter dated 17/12/2018 addressed to the applicant -Gopal Jhunjhunwala. It is annexed to the reply filed in the present application. It is true

that in the said heirship certificate, there are seven applicants and present applicant Gopal Jhunjhunwala is one of them. The name of Suraj Jhunjhunwala does not find place there. It is submitted that Suraj is the son of Gopal Jhunjhunwala and he cannot be the heir of deceased Gomatibai when his father Gopal is alive. It is submitted that in that heirship certificate, there is no reference of the Will executed by deceased Gomatibai. According to the applicants, this heirship certificate was obtained in order to assist the Official Liquidator to understand who can be the probable objectors to the Will executed by Gomatibai. This heirship certificate is having that much relevance only.

9. As said above, deceased Gomatibai has bequeathed the right to purchase plot No. 144 to present two applicants. In view of that, Court find that the sale can be confirmed in the names of two applicants.

10. In view of the above, the sale of plot No. 144 is confirmed in favour of applicant No.1-Gopal Jhunjhunwala and Applicant No.2-Suraj Gopal Jhunjhunwala.

11. Civil Application is disposed of.

**JUDGE**