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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7085 OF 2018

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| 1. | Simintinibai w/o Bapu Swami
Age – 83 years, Occ – Household
R/o Sailu, Taluka – Sailu
District – Parbhani | PETITIONERS |
| 2. | Subhash s/o Bapu Swami
Age – 67 years, Occ – Retired
R/o Peth Mohalla Sailu, Taluka – Sailu
District – Parbhani | |
| 3. | Mallikarjun s/o Bapu Swami
Age – 49 years, Occ – Service
R/o Peth Mohalla Sailu, Taluka – Sailu
District – Parbhani | |
| 4. | Shreshailya s/o Bapu Swami
Age – 28 years, Occ – Labour
R/o Iqbal Nagar, Parbhani
Taluka and District – Parbhani | |
| 5. | Ratnamala w/o Subhash Swami
Age – 58 years, Occ – Houseold
R/o Math Galli, Sailu,
Taluka – Sailu, District – Parbhani | |
| 6. | Rekha w/o Mallikarjun Swami
Age – 45 years, Occ – Household
R/o Swami Math, Sansthan Sailu
Taluka – Sailu, District – Parbhani | |
| 7. | Anuradha w/o Shreshailya Swami
Age – 41 years, Occ – Household
R/o Peth Mohalla Sailu, Taluka – Sailu
District – Parbhani | |
| 8. | Pooja d/o Mallikarjun Swami
Age – 27 years, Occ – Education
R/o Swami Math Sansthan Sailu,
Taluka – Sailu, District – Parbhani | |

9. Bhakti d/o Subhash Swami
Age – 27 years, Occ – Education
R/o Marwadi Galli Math Sansthan Sailu
Taluka – Sailu, District – Parbhani
10. Prasad s/o Mallikarjun Swami
Age – 27 years, Occ – Education
R/o Swami Math, Sansthan Sailu,
Taluka – Sailu, District – Parbhani
11. Shubham s/o Subhash Swami
Age – 25 years, Occ – Education
R/o Peth Mohalla Sailu
Taluka – Sailu, District – Parbhani
12. Shraddha d/o Subhash Swami
Age – 21 years, Occ – Education
R/o Math Galli, Sailu,
Taluka – Sailu, District – Parbhani
13. Ganesh s/o Shreshailya Swami
Age – 21 years, Occ – Education
R/o Peth Mohalla Sailu, Taluka – Sailu
District – Parbhani
14. Arti d/o Shreshailya Swami
Age – 15 years, Occ – Education
Minor U/g of real mother
Anuradha w/o Shreshailya Swami
Age – 41 years, Occ – Household
R/o Peth Mohalla Sailu
Taluka – Sailu, District – Parbhani
15. Chandrakala w/o Ramrao Aundhekar
Age – 75 years, Occ – Household
R/o Aundha, Taluka – Aundha
District – Hingoli
16. Mahananda w/o Vaijnath Swami
Age – 75 years, Occ – Household
R/o Latur, Taluka & District – Latur
17. Saroj w/o Rajkumar Deshikendra
Age – 53 years, Occ – Household

R/o AUSA, Taluka – AUSA
District – Latur

18. Premalla @ Umabai w/o Nagnath Swami
Age – 69 years, Occ -Household
R/o AUSA, Taluka – AUSA
District – Latur

19. Shobha w/o Ramling Pandekar
Age – 58 years, Occ – Household
R/o Barshi, Taluka – Barshi
District – Solapur

Petitioner No. 15 to 19 through
GPA holder Mr. Prasad s/o Mallikarjun Swami
Age – 27 years, Occ – Education
R/o Shankarling Mandir, Sailu
Taluka – Sailu, District – Parbhani

VERSUS

1. Mahadeo s/o Manikrao Agjal
Age – 45 years, Occ – Service
R/o Sailu, Taluka – Sailu
District – Parbhani

RESPONDENTS

2. Babasaheb Maroti Sarkale
Age – 48 years, Occ – Business
R/o Sailu, Taluka – Sailu
District – Parbhani

3. Shivkumar Trivanappa Navade
Age – 54 years, Occ – Service
R/o Sailu, Taluka – Sailu
District – Parbhani

4. Rajendra Babuappa Mahajan
Age – 49 years, Occ – Agril
R/o Sailu, Taluka – Sailu
District - Parbhani

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Mr. Arvind Deshmukh, Advocate for the petitioners
Mr. Manish P. Tripathi, Advocate for the respondents

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 3rd FEBRUARY, 2022

PRONOUNCED ON : 21st FEBRUARY, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.

2. This petition, filed under Article 227 of the Constitution of India, takes exception to the order dated 27th April, 2018 passed by the learned Ad Hoc District Judge – 3, Parbhani in Miscellaneous Civil Appeal No. 11 of 2018, thereby allowing the appeal and setting aside the judgment and order dated 20th January, 2018 passed by Civil Judge, Senior Division, Parbhani in Civil Miscellaneous Application No. 495 of 2015.

3. Facts in brief, shorn of unnecessary details, are that – petitioner No.1 is sister in law (Brother's wife), petitioners No. 2 to 4 are nephews, petitioners No. 5 to 7 are cousin daughters-in-law, petitioners No. 8, 9, 12 and 14 are cousin granddaughters, petitioners No. 10, 11 and 13 are cousin grandsons, petitioners No. 15 and 16 are sisters and petitioners No. 17 to 19 are brother's sons of deceased Rachlinga Shivacharya Swami, whose ordinary residence was Gangadhar Swami Math, Sailu, Taluka – Sailu, District – Parbhani. He expired on 7th June, 2015.

4. The petitioners filed an application under section 2 of the Bombay Regulation Act (VIII), 1827 (for short "Regulation of 1827"), for grant of heirship certificate of deceased Rachlinga Swami. The petitioners contended in the application that, they are the only legal, legitimate and lawful heirs and successors of deceased Rachlinga Swami and except them Rachlinga Swami does not have any other legal heir or successor. The petitioners claimed heirship certificate, as certain properties of the deceased were to be mutated in their names and the authorities insisted for heirship certificate.

5. The respondents, being care takers of Veer Shaiva Samaj Seva Samiti, Sailu, objected the claim of the petitioners contending that the deceased Rachalinga Swami was a Sanyasi and Bal Brahmachari, who became disciple (chela) of Guru Gangadhar Swami and, therefore, deceased Rachaling Swami had no blood relation with applicants. All the properties of deceased Rachlinga Swami belong to the Math and they cannot be transferred to blood relatives of the deceased.

6. The trial court, after recording evidence, allowed the application filed by the petitioners and directed to issue heirship certificate in the name of the petitioners. Being aggrieved by the

said order of granting heirship certificate of Rachlinga Swami, in favour of the petitioners, the respondents filed Miscellaneous Civil Appeal No.11 of 2018 in the District Court, which was allowed. This order is in the present writ petition.

7. Heard learned advocate for the petitioners and learned advocate for the respondents.

8. Learned advocate for the petitioners strenuously submits that the petitioners want the heirship certificate only for the status purpose and they are not interested in the property of the Math. The petitioners, by filing pursis at Exhibit-22, have withdrawn their contention that they want legal heirship certificate for movable and immovable properties of deceased Rachlinga Swami. He, therefore, submits that the petitioners are not claiming any right and interest in the property owned by the Trust or the Math, but they are claiming certificate for their formal recognition of status as heirs of deceased Rachlinga Swami. He further submits that the respondents have no *locus standi* to oppose the claim of the petitioners. According to him, in view of filing of the pursis of relinquishing the claim in the property, the trial court was justified in granting heirship certificate in favour of the petitioners, however, the appellate court has erred in setting aside the order passed by the trial

court. Further submission is that the appellate court has wrongly appreciated the evidence on record and has given erroneous reasons while allowing the appeal. He, therefore, submits that the impugned order of the appellate court is liable to be quashed and set aside, by maintaining the trial court's order and the writ petition deserves to be allowed.

9. Per contra, learned advocate for the respondents supported the impugned order. He submits that since the deceased Rachlinga Swami was a sanyasi, he had severed all his ties with the blood relations and, therefore, the trial court committed an error in granting heirship certificate in favour of the petitioners. He supports the appellate court's order and submits that there is no substance in the writ petition and the petition deserves to be dismissed.

10. Before deciding the controversy in the present matter, it is necessary to consider relevant provision i.e. Section 2 of the Regulation of 1827.

"2. First. But if such recognition requested, proclamation will be issued :

But, if an heir, executor or administrator is desirous of having his right formally recognized by the Court, for the purpose of rendering it more safe for persons in possession of, or indebted to, the estate to

acknowledge and deal with him, the Judge, on application, shall issue a proclamation, in the form contained in Appendix A, inviting all persons who dispute the right of the applicant to appear in the Court within one month from the date of the proclamation and enter their objections, and declaring that, if no sufficient objection is offered, the Judge will proceed to receive proof of the right of the applicant, and, if satisfied, grant him a certificate of heirship, executorship or administratorship.

Second. Publication of proclamation. [Rep. Act XII of 1873.] ”

11. The language used in section 2 of the Regulation of 1827 indicates that if an heir is desirous of having his right formally recognized by the court, for the purpose of rendering it more safe for persons in possession of, or indebted to, the estate to acknowledge and deal with him the court shall issue a proclamation inviting the persons who dispute the right of the applicant and if no objection is offered and if satisfied grant him the heirship certificate.

12. Admittedly, deceased Rachlinga Swami was a Bal Brahmachari and he had become Sanyasi. He was disciple (Chela) of Gangadhar Swami and was residing at Gangadhar Swami Math, Sailu. While becoming Sanyasi, he had severed all his connections with the members of his natural family and had become part of the family of Gangadhar Swami.

13. In ***"Krishna Singh V/s Mathura Ahir and Others" AIR 1980***

SC 707 the Apex Court has observed thus :

“31. One who enters into a religious order severs his connection with the members of his natural family. He is accordingly excluded from inheritance. Entrance to a religious order, is tantamount to civil death so as to cause a complete severance of his connection with his relations, as well as with his property. Neither he nor his natural relatives can succeed to each other’s properties. Any property which may be subsequently acquired by persons adopting religious orders passes to their religious relations. The persons who are excluded on this ground come under three heads, the Vanaprastha, or hermit; the Sanyasi or Yati, or ascetic, and the Brahmachari, or perpetual religious student. In order to bring a person under these heads it is necessary to show an absolute abandonment by him of all secular property, and a complete and final withdrawal from earthly affairs. The mere fact that a person calls himself a Byragi, or religious mendicant, or indeed that he is such, does not of itself disentitle him to succeed to property. Nor does any Sudra come under this disqualification, unless by usage. This civil death does not prevent the person who enters into an order from acquiring and holding private property which will devolve, not of course upon his natural relations, but according to special rules of inheritance. But it would be otherwise if there is no civil death in the eye of the law, but only the holding by a man of certain religious opinions or professions.

64. In order to prove that a person has adopted the life of a sanyasi, it must be shown that he has actually relinquished and abandoned all worldly possessions and relinquished all desire for them or that such ceremonies are performed which indicate the severance of his natural family and his secular life”

14. In **"Sital Das V/s Sant Ram and Others"** AIR 1954 SC 606,

the Apex Court has held -

“... It is well known that entrance into a religious order generally operates as a civil death. The man who becomes an ascetic severs his connection with the members of his natural family and being adopted by his preceptor becomes, so to say, a spiritual son of the latter. The other disciples of his Guru are regarded as his brothers, while the co-disciples of his Guru are looked upon as uncles and in this way a spiritual family is established on the analogy of a natural family.”

15. As per the aforesaid ratio of the Apex Court, once a person becomes a Sanyasi and enters the religious order, it tantamounts to his civil death so as to cause complete severance of his connection with his relations. Neither he, nor his natural relatives can succeed to each others properties. In this view of the matter, the petitioners cannot be said to be heirs of deceased Rachlinga Swami.

16. In the evidence led before the trial court, petitioner No.1 has given following admissions,

- “(i) the monk has no relationship with anybody;*
- (ii) Rachling Swami have no property of his own and also any other source of income.*
- (iii) She along with respondents No. 3 and 10, have applied to Municipal Council, to get the house property mutated in their names.*

(iv) They have filed application to get legal heirship certificate only relating to the income of property of the Math and for that, respective authorities have demanded them their legal heirship certificate.”

17. Taking into consideration the admissions given by the petitioners before the trial court, it is not possible to accept the submission of the petitioners that they only want formal recognition of their status as heirs of deceased Rachlinga Swami. Taking into consideration the legal position enumerated in the above ratio, the petitioners cannot claim that they are legal heirs of deceased Rachlinga Swami.

18. The trial court has failed to take into consideration the above admissions and the admitted position on record that deceased Rachlinga Swami was Bal Brahmachari and was a Sanyasi and he had severed all the ties with blood relations. He had withdrawn himself from earthly affairs. Therefore, the petitioners are not entitled to claim to be heirs of deceased Rachalinga Swami and, hence, not entitled to heirship certificate. The judgment and order of the trial court is contrary to the aforesaid ratio.

19. In view of the ratio laid down in the above citations it is not possible to accept the contentions of the petitioners that

they are not interested in the property of the Math and they need the heirship certificate only for the status purpose. Since the petitioners are not entitled in law for the heirship certificate, the trial court committed an error in granting heirship certificate in favour of the petitioners.

20. The order passed by the appellate court is a reasoned order, it has taken into consideration the effect of the deceased Rachalinga Swami becoming Sanyasi. The appellate court has properly scrutinized the evidence and is justified in upsetting the trial court's judgment and order. There is no illegality or perversity in the order impugned in the present writ petition. Since the writ petition is devoid of merit, the same is dismissed. Rule discharged. No costs.

[NITIN B. SURYAWANSHI]
JUDGE