

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 158 OF 2017

MANGALABAI @ SUMITRABAI SADASHIV DUDHMAL AND OTHERS
VERSUS
LIFE INSURANCE CORPORATION THROUGH IT S MANAGER AND
OTHERS

...
Advocate for Applicants : Mr. G.G. Kadam
Advocate for Respondent Nos.3 to 6 : Mr. D.M. Shinde
....

CORAM : RAJESH S. PATIL, J.
DATE : 20th December, 2022

PER COURT :

1. This Civil Revision Application is filed, challenging the concurrent judgments passed by the District Judge and by the Civil Judge, Senior Division, in the matter of issuance of succession certificate.
2. The present applicants had filed an application for issuance of succession certificate before the Civil Judge, Senior Division. The Civil Judge, Senior Division by its order dated 14th March, 2012 issued succession certificate to applicant Nos.2 and 3 and respondent Nos.3 to 6 herein. Since no reliefs were granted to applicant No.1, she filed Appeal before the District Judge as far as non granting of succession certificate to her. Applicant No.1's

Appeal was dismissed by the judgment and order dated 1st August, 2017. Against the said concurrent findings the present Civil Revision Application has been filed in the year 2017. Till date there is no relief granted in this Civil Revision Application.

3. Learned Counsel for the applicants initially pointed out the judgment of Division Bench of this Court passed in the matter of *Nola Jonathan Ranbhise Vs. Union of India and Others*, reported in **2014 (3) BCR 641**.

4. Learned Counsel for the applicants made submissions that, in view of the findings recorded in Nola (*supra*) the Appeal filed by his clients - the applicants herein before the District Court was not maintainable, and against the impugned order of the Trial Court, the applicants should have directly come to the High Court. The submissions of learned Counsel for applicants was that, there cannot be estoppel against the statute.

5. Learned Counsel for the respondents opposes this submissions and pointed out to this Court the judgment and order in the case of *Sunil Raju Salampure Vs. State of Maharashtra* reported in **2017(3) Mh.L.J. 404** and judgment and order passed in the case of *Vitthal Ramchandra Mali and Ors. Vs. Laxmi Ganpati*

Mali and Ors., reported in **2006(4) ALL MR 389**.

6. Learned Counsel for the respondents pointed out that, both these judgments are very clearly make difference between grant of probate and grant of succession certificate. The learned Counsel for the respondents further pointed out that, the Division Bench was dealing with the issue of grant of probate under Chapter 4 of the Indian Succession Act, whereas, the present proceedings are related to grant of a succession certificate under Chapter 10 of the Indian Succession Act. The same has been clarified in two judgments which are referred above.

7. Before going to the merits of the matter, I am dealing with the first submission made by the learned Counsel for applicants. The present proceedings are filed for issuance of succession certificate under Section 372 of the Indian Succession Act. Even though Section 372 of the Indian Succession Act refers to application has been made to the District Judge, Section 388(2) of the Indian Succession Act refers to inferior Court to the District Court will have the power to grant such succession certificate. Hence, Section 388(2) of the Act is reproduced herein below :

Section 388 (2) :

Any inferior Court so invested shall, within the local limits of

its jurisdiction, have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this Part upon the District Judge, and the provisions of this Part relating to the District Judge shall apply to such an inferior Court as if it were a District Judge:

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (1) of Section 384 shall lie to the District Judge, and not to the High Court, and the District Judge may, if he thinks fit, by his order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Judge.

8. Therefore the matter in hand, the application was correctly filed by the applicants before the Civil Judge, Senior Division for grant of succession certificate under Section 372 of the Indian Succession Act. As applicant No.1 was unsuccessful she preferred an Appeal before the District Judge. The Appeal so provided was filed before the District Judge as per the provisions of proviso to Section 388 (2). The same is already reproduced above.

9. Hence, applicant No.1 was well aware about the proviso to Section 388(2) of the Indian Succession Act.

10. On rejection of such Appeal by the District Judge the applicants have filed present Civil Revision Application pursuant to the provisions of Section 388(3) of the Indian Succession Act, as revision. The applicants were well aware about all these provisions,

however, while arguing the Civil Revision Application all such objections which are normally taken by other side were raised by the applicants. For the reasons stated above, the objections raised by the applicants are rejected.

11. Learned Counsel for the applicants has thereafter argued the matter on merit. He showed the relevant part of the impugned order. The learned Counsel for the applicants showed me one of the Life Insurance Policy bearing the name of applicant No.1 has been shown as nominee. The learned Counsel for applicants also made submissions that the name of applicant No.1 is on ration card. Learned Counsel for the applicants also argued that, applicant No.1 was married in the year 1983 and respondent No.3 was married to the deceased in the year 1985, therefore, applicant No.1 was married earlier in time to the deceased. Therefore the marriage, if any, of respondent No.3 with the deceased is illegal.

12. Learned Counsel for the respondents showed me the reasoning recorded by both the Courts and supported findings of both the lower Court. After placing reliance on documents of lower Court including that of marriage card of deceased with respondent No.3, the evidence of real brother of deceased, the maintenance application filed by respondent No.3 against the deceased, the

judgment and order passed in partition suit, further stated that two Courts have given findings against the applicant No.1, hence there is no merit in the present Civil Revision Application and the same should be dismissed.

13. I have carefully considered both the judgments of the Courts below. The Respondent No.3 has come before the Court with the case that her marriage with the deceased was solemnized on 11th May, 1985. The marriage card (Exh.63) supports these contentions. Even the evidence of real brother of deceased supports the contentions of the respondents. The applicant No.1 was not able to plead the exact date of her marriage with the deceased. Even her witness P.W. No.2, was not able to mention the date of marriage of applicant No.1 with the deceased. It is only in the cross-examination that the applicant No.1's advocate suggested to the respondents' witness that the applicant No.1 was married to the deceased in the year 1983. However, no evidence is adduced to support his contentions. These contentions are without any pleadings hence, it cannot be accepted. So also the fact that, the copy of judgment and order of Maintenance Application No. 17 of 1993 (Exh.64) filed by the respondent No.3 against the deceased, goes to show that respondent No.3 was married to the deceased as

the said application specifically stated the date of marriage i.e. 11th May, 1985. It was also produced on record the bonafide certificate of respondent No.4 to 6 which also shows that, they are the children of the deceased.

14. Hence, in the given circumstances where the applicant Nos.2 and 3 have succeeded alongwith respondent Nos.3 to 6, both the lower Courts were right in rejecting the application of applicant No.1. Hence, present Civil Revision Application is dismissed.

[RAJESH S. PATIL]
JUDGE