

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO.88 OF 2021 IN
CIVIL REVISION APPLICATION NO.90 OF 2018**

Dasopant Digamberrao Goswami,
Died through L.Rs.

1. Shaila w/o Dasopant Goswami (Died)
2. Samir s/o Dasopant Goswami ... **APPLICANTS**

VERSUS

Mangalbai Vilas Goswami & anr. ... **RESPONDENTS**

.....
Shri V.D. Hon, Senior Counsel with
Shri S.V. Hange, Advocate for applicants
Shri S.A.P. Quadri, Advocate for respondents No.1 and 2
.....

CORAM : R. G. AVACHAT, J.

Date of reserving order : 7th March 2022

Date of pronouncing order : 23rd March 2022

ORDER :

This is an application for review of the judgment and order dated 1/3/2021, passed by this Court in Civil Revision Application No.90/2018.

2. Heard. One Digambarrao was a common ancestor. He was survived by his two sons namely Vilas and

Dasopant. Vilas died in 2000. The respondents Mangalbai and Yogesh claim to be Class-I heirs of deceased Vilas as his widow and child/ son respectively. Both the respondents had filed an application (Misc. Civil Application No.70/2000 – Renumbered as No.12/2001) for grant of heirship certificate in recognition of their heirship to deceased Vilas. The Court of Civil Judge, Senior Division, Ambajogai rejected the said application vide judgment and order dated 23/6/2003. The respondents preferred appeal, being Regular Civil Appeal No.69/2009. The learned Additional District Judge-4, Ambajogai allowed the said appeal vide judgment and order dated 28/2/2018, granting heirship certificate in favour of respondents Mangal and Yogesh. The applicants herein preferred Civil Revision Application No.90/2018 against the judgment and order dated 28/2/2018, granting heirship certificate in Regular Civil Appeal No.69/2009. This Court, vide judgment and order dated 1/3/2021, dismissed the said revision application, the review of which has been sought in this application.

3. Learned Senior Counsel for the applicants would submit that, in March 2008, the applicant Samir filed application, being Misc. Civil Application No.40/2008. The

Court of Civil Judge, Junior Division, Ambajogai allowed the said application on 30/6/2008, granting heirship certificate in favour of applicant Samir. Before allowing the application, the Court concerned had issued proclamation/ citation calling for objections, if any, for grant of heirship certificate in favour of Samir. The respondents herein did not raise any objection. As such, the heirship certificate came to be granted without there being any demur on behalf of the respondents herein. The respondents have consciously suppressed this fact in their proceedings namely the appeal preferred by them against the order refusing to grant heirship certificate in their favour.

4. According to learned Senior Counsel, the competent Court had granted heirship certificate in favour of applicant Samir. Inadvertently, this fact could not be brought to the notice of this Court while it decided the revision application vide judgment and order dated 1/3/2021. According to learned Senior Counsel, when already heirship certificate was granted in favour of the applicant Samir, the subsequent grant of heirship certificate in favour of the respondents herein is non est. The respondents herein had preferred a Civil Appeal, No.123/2008 against grant of heirship certificate in favour of applicant Samir. The said

appeal has been dismissed for want of prosecution. As such, the order granting heirship certificate in favour of Samir has attained finality. It was in the knowledge of the respondents. They suppressed the said fact from the Court of District Judge-4, which allowed their appeal on 28/2/2018, granting heirship certificate in their favour.

4. The learned Senior Counsel has relied on a judgment of this Court in case of Parvatabai @ Beby wd/o Parasram More & anr. Vs. Surekha @ Rekha wd/o Dashrath Surjuse reported in (2019) 3 AIR Bom. R. 164 to submit that the grant of heirship certificate in favour of the respondents herein subsequent to the one granted in favour of applicant Samir would be non est. The learned counsel has placed strong reliance on Sections 383, 385 and 387 of the Indian Succession Act to ultimately urge for allowing the review application.

5. The learned counsel for the respondents would, on the other hand, submit that, no heirship certificate has in fact been issued in the name of the applicant Samir in spite of there being an order in his favour. Samir falls in Class-II heir category of the deceased Dasopant. In spite of having been aware of the claim of the respondents to be Class-I heirs of

deceased, Samir did not make them party to his application (Misc. Civil Application No.40/2008) for heirship certificate. It is Samir who has in fact practiced fraud on the Court. The learned counsel ultimately urged for rejection of the application.

6. Considered the submissions advanced. In case of Parvatabai (supra), it has been observed :

“There is a scheme provided for revocation or annulment of certificate, with which any person is aggrieved and that there is also the option of approaching the Civil Court by filing a suit or any other proceedings and that grant of earlier certificate would not act as res judicata between the parties. In the present case, even if the respondent was not aware about grant of heirship certificate in favour of the petitioners, the moment the grant of certificate in favour of the petitioners was brought to her notice, the only course available for her was to have taken appropriate steps either for revocation of the certificate under Section 383 of the Succession Act or for annulment of the said certificate under clause 7 second of the Regulation or to have filed a suit as contemplated under Section 387 of the said Act. To proceed with the present application, filed by the respondent, which is only for grant of legal heirship certificate to her would be an exercise in futility, in view of Section 385 of the Act. As long as the certificate granted in favour of the petitioners continues in force, the entire exercise sought to be undertaken by the Trial Court at the behest of the respondent would result in an invalid certificate. This cannot be contemplated in law. The impugned order passed was not based on proper appreciation

of the relevant provisions of law and is quashed and set aside.”

7. The facts of the present case are altogether different than the facts in Parvatabai’s case. In the case in hand, two heirship certificates have already been issued in favour of different persons who have competing claim. In Parvatabai’s case, the heirship certificate was granted in favour of the petitioners therein. The petitioners therein had moved an application Exh.18 for dismissal of the proceeding initiated by the respondent for grant of heirship certificate. The main ground of contention therein was that the heirship certificate has already been granted in favour of the petitioner therein. This Court, in Parvatabai’s case, therefore, observed as stated in above paragraph No.6.

8. In the case in hand, the applicant Samir and respondents claim to be legal heirs of deceased Dasopant. The claim of Samir was through his father, real brother of Dasopant. Samir’s father was a Class-II heir of the deceased Dasopant. Whereas the learned Additional District Judge, after having found the respondents herein to be the Class-I heirs of the deceased Dasopant, granted heirship certificate in their favour. This Court upheld the said order vide judgment

and order dated 1/3/2021 passed in Civil Revision Application. Admittedly, the Civil Suit is pending between the parties over their substantive rights. Needless to mention, grant of heirship certificate does not confer any right, title and interest in immovable property of the deceased. The applicant Samir was in the know of the fact that the respondents were claiming to be Class-I heirs of the deceased Dasopant. He still did not make them party to his application (Misc. Civil Application No.40/2008) for grant of heirship certificate. By virtue of Section 390 of the Indian Succession Act, 1925, the provisions of Sections 370, 372 and further Sections mentioned in Section 390 have an application to the proceedings filed for grant of heirship certificate. Section 372(1) of the Indian Succession Act speaks of application for succession certificate. Such application was required to be filed in terms of the provisions of the Code of Civil Procedure for signing and verification of a plaint. The said application shall contain particulars inter alia the family or other near relatives of the deceased and their respective residences. The applicant Samir has consciously not complied with the provisions of Section 372 of the Indian Succession Act.

9. Although the grant of heirship certificate in favour

of Samir precedes grant of such certificate in favour of the respondents herein, this Court is not inclined to grant the present application mainly on the ground the applicant Samir to have been a Class-II heir of the deceased while the respondents herein are the Class-I heirs. A suit is also filed wherein substantive rights of the parties may be decided. In this factual backdrop, the heirship certificate granted in favour of the applicant must yield to the heirship certificate granted in favour of the respondents herein. In these facts and circumstances of the case, the application for review stands rejected.

**(R. G. AVACHAT)
JUDGE**

fmp/-