

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

942 CRA NO.198 OF 2019

SHANTABAI GANESH SAGARE
VERSUS
KANTABAI LAXMAN PATIL

...

Advocate for Petitioner : Mr. Deshpande Amit S.
Advocate for Respondent : Mr. R.R. Suryawanshi.

CORAM : MANGESH S. PATIL, J.
DATE : 26.04.2022.

PER COURT :

The parties are real sisters. The revision applicant submitted an application under Section 2 of the Bombay Regulation Act seeking heirship certificate in the name of both of them as heirs of deceased father Mahadeo.

2. The trial court directed heirship certificate to be issued in the name of both of them but put a rider that the certificate would not be used for mutating applicant's name to the house property left behind by their deceased father.

3. Being aggrieved by such a rider put by the trial court the revision applicant preferred appeal. By the judgment and order under challenge it has been dismissed.

4. It is a matter of record that Mahadeo had left behind a house property. Though the revision applicant claimed heirship certificate under the Bombay Regulation in the name of both the parties who are real sisters *inter se*, the respondent had raised an issue by contending that Mahadeo had bequeathed

the house property to her by will dated 05.12.2007.

5. Having noticed that it was a summary enquiry and the dispute pertains to right and title to the house property, the trial court as also the lower appellate court directed the heirship certificate to be issued in the name of both of them but put up a rider mentioned herein above.

6. Learned advocate for the revision applicant would vehemently submit that the trial court had grossly erred in putting the rider. The trial court had no jurisdiction to put up any such rider or condition. He would further submit that even that condition merely restricts the revision applicant's power to get her name mutated to the suit property but it does not put a similar restriction on the power of respondent.

7. The learned advocate for the respondent would submit that the respondent has been propounding a will. Affidavit of the attesting witness was filed along with her reply to the application and there is no illegality.

8. Having considered the rival submissions and after perusal of the record it does appear that there is no dispute about the fact that the parties to the proceeding are real sisters inter se. Their father Mahadeo left behind a house property. The respondent claims that he executed a will and bequeathed the house property to her alone. To the extent of accepting the request of the revision applicant for issuance of certificate in the name of both of them there cannot be any two opinion.

9. As can be seen from the paragraph No. 9 of the order of the trial court, noticing that there was a serious dispute as to the title to the house property and that it was not an appropriate proceeding to embark upon and decide that issue and it was also specifically observed that the parties were well advised to approach a civil court to get their rights decided in a substantive proceeding. Having noticed such a dispute, in all probability, the trial court had put up a condition that the certificate should not be used for effecting any mutation.

10. Though the learned appellate court by referring to various clauses of the Bombay Regulation and particularly Clause No. 7 has found that since it was a summary proceeding, the dispute as to the title could not be gone into and decided, has not apparently examined propriety or otherwise and legality or otherwise of putting a condition by the trial court.

11. If the condition is read in juxtaposition with the observations in paragraph No. 9 of the order passed by the trial court, as has been rightly pointed out by the learned advocate for the revision applicant, the rider only prohibits her from getting her name mutated on the record on the basis of the certificate. It does not similarly bind the respondent with the condition. If at all the trial court was of the opinion that the certificate should not be misused since the issue as to the title to the property was not decided by a competent civil court, it would have been appropriate if even the respondent was similarly prevented from getting her name mutated to the suit property

on the basis of certificate to be issued. Pertinently, the lower appellate court has not examined this aspect. Therefore, though there is no apparent illegality in dismissing the appeal by the lower appellate court, it would have been judicious to make the condition operative against both the parties or else to delete it outrightly.

12. Be that as it may, this is a revision under Section 115 of the Code of Civil Procedure. Unless there is something to demonstrate that the observations and conclusions drawn by the courts below are perverse, arbitrary and capricious, this court cannot substitute its own opinion in place of the one of the lower courts.

13. Propriety apart, the orders of the courts below do not seem to be either perverse, arbitrary or capricious.

14. The Revision Application is dismissed. It is made clear that it would always be open for the parties to get their right as to the title to the property decided in an appropriate proceeding.

(MANGESH S. PATIL, J.)

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