

WRIT PETITION NO.14185 OF 2021

VERSUS

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DATE : 22nd AUGUST, 2022

2. The respondents filed Civil Miscellaneous Application No. 244/2015 under Bombay Regulation Act, 1827, seeking heirship certificate in respect of their father Sayyad Allabaksh

Ismail Kazi, mother Sayyad Fatema Kazi and grandmother Ashabi Mard Ismail Husen Kazi. In the said application along with other respondents, present petitioners were arrayed as respondents No. 2, 3, and 4. In the said application after hearing the parties, Trial Court passed following order:

"1. Application is allowed.

2. Issue heirship certificate jointly in the names of applicants- (1) Sayyad Mahammad Siddik Allabaksh Kazi, (2) Sayyad Mahammad Sabir Allabaksh Kazi, (3A) Sayyad Anjun Shakir Kazi, (3B) Sayyad Mahammad Sahil Kazi, (3C) Sayyad Mahammad Alim Shakir Kazi, (4) Sayyad Halimbai Makbul, (5) Bismilla Arif Kazi, (6) Shaikh Abeda Maheboob, (7) Shaikh Saida Illiyas, (8) Sayyad Ayesha Husen concerning to property bearing G.No. 407, more specifically described in para No. 3 of application left behind the death of Sayyad Allabaksh Ismile Kazi, Sayyad Fatema Allabaksh Kazi, Ashabi Ismile Husen Kazi on payment of requisite stamp.

In view of nature of proceeding all parties shall bear their respective costs.

It is made clear that the grant of heirship certificate is on the basis of prima facie best title shown by applicants and thereby parties are at liberty to get title decided through Civil Court."

3. Being aggrieved by this order the petitioners preferred Regular Civil Appeal No. 86/2017. Along with the appeal injunction application was filed seeking stay to the Trial Court's order. In the said appeal the petitioners filed application Exhibit-71 seeking direction that taking into consideration the grounds raised in the appeal, injunction application and the urgency in the matter that the suit property is likely to be allotted, till legal heirs of respondent No. 8 appear in the appeal, status quo order be passed in respect of the suit property. Said application is opposed by respondents No. 2 to 7. By the impugned order, the Appellate Court rejected the application holding that already notices are issued to the respondents, as to why restrictive order should not be passed. Said order cannot be altered, hence, the application is devoid of merit and same is rejected. The petitioners are aggrieved by this order.

4. I have given thoughtful consideration to the rival submissions of the parties. Perused the grounds raised in the petition, documents filed on record and citations relied on by both the parties.

5. While allowing Civil Miscellaneous Application No. 244/2015 , the Trial Court has issued heirship certificate in respect of property bearing Gut No. 407. It is settled legal position that heirship certificate issued under Bombay Regulation Act, 1827, is a formal recognition of heirs, executors and administrators.

6. The position of law that emerges from the provisions of Bombay Regulation Act, 1827, is that an heirship certificate does not bestow the status of an heir upon a person. It does not grant any right, in the property. *"Grant of heirship certificate does not establish the right or title in the estate of the deceased. The parties need to prosecute their remedy for determination of their rights in the estate/property of the deceased by pursuing appropriate legal remedy. The contesting parties in the proceeding under Bombay Regulation Act, 1827 have an adequate remedy of establishing their rights in the estate of the deceased in appropriate proceeding"* (vide **Aloysius Manuel D'souza and Ors. v. Mary Kamal William Manuel D'souza and Ors.** 2006 (6) Bom CR 56).

7. The issuance of heirship certificate by the Trial Court in respect of property bearing Gut No. 407, prima facie therefore, is unsustainable in view of settled legal position that heirship certificate does not confer any right or title in the property. Grant of heirship certificate in respect of property bearing Gut No. 407 is therefore without jurisdiction. The Trial Court has further committed an error in observing below the operative order that "it is made clear that grant of heirship certificate is on the basis of prima facie best title shown by applicants and thereby parties are at liberty to get their title decided through civil court". The Trial Court is right though in holding that the parties are at liberty to get their title decided through Civil Court, but has erred in holding that the grant of heirship certificate is on the basis of prima facie best title shown by the applicants. Since the impugned certificate is granted contrary to the provisions of Bombay Regulation Act, 1827, same ought to have been stayed by the Appellate Court, particularly, taking into consideration the urgency shown by the petitioners. The approach of the Appellate Court that notices are issued and the order cannot be modified is also cannot be sustained in the facts of the present case. The Appellate Court has lost sight of

the fact that, substantial appeal is filed challenging the Trial Court's order. Prima facie, the Trial Court's order is without jurisdiction. In that view of the matter, the Appellate Court ought to have granted status quo as prayed by the petitioners in application Exhibit-71.

8. For the aforesaid reasons, impugned order cannot be sustained. Hence, the following order:

ORDER

- i) The writ petition is allowed.
- ii) The impugned order dated 10.12.2021 passed by the learned Additional District Judge, Ahmednagar, below Exhibit-71 in Regular Civil Appeal No. 86/2021, is hereby quashed and set aside.
- iii) Application Exhibit-71 is allowed.
- iv) The Appellate Court shall decide the appeal filed by the petitioners within a period of three months from the date of receipt of this order. Till the decision of the appeal, parties shall maintain *status quo*.
- v) The petitioners and respondents are at liberty to get their rights in the estate of the deceased adjudicated by the competent Civil Court.

- vi) It is made clear that the observations in this order are *prima facie* and shall not influence the Appellate Court while deciding the appeal on merit.

[NITIN B. SURYAWANSHI, J.]