

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 1361 OF 2020

PRASAD SUBHASH PATIL AND OTHERS

....PETITIONERS

V/s.

SHRI. PRAKASH AAPGONDA PATIL

.....RESPONDENT

Mr. Prashant P. Kulkarni for the petitioners

Mr. Saurabh Oka for respondent

CORAM : NITIN W. SAMBRE, J.

DATE: JANUARY 10, 2022.

P.C.:

1] Respondent initiated Probate proceedings claiming to be son of deceased Aapgonda Shankar Patil who died on 31/10/2014 after executing unregistered Will dated 30/09/2014.

2] Petitioner took out Application Exh. 5 seeking impleadment in the capacity of legal heirs of deceased viz. grandson of Aapgonda Shankar Patil. Prayer came to be rejected on 23/10/2019.

3] Submissions of learned counsel for the applicant Mr. Oka, appearing for respondents are, petitioners can be objectors to the Probate proceedings, however, they have no right to claim impleadment under the statutory scheme as reflected in provisions of Section 283 and 284 of the Indian Succession Act.

4] I have considered submissions.

5] It is required to be noted that status of the petitioner as that of legal heirs of deceased who has executed unregistered Will dated 30/09/2014 is not in dispute.

6] Considering the blood relation between the parties, in my opinion, petitioners were justified in moving an application under Order I Rule 10 of Code of Civil Procedure, 1908 for impleadment. Said issue is no more *res-integra* as this Court has already taken a view that legal heir has to be impleaded as party respondent in the proceedings.

7] Appropriate support can be drawn from paragraph nos. 9 & 10 of the Judgment of the Apex Court in the matter of **Manibhai Amaidas Patel and another v/s. Dayabhai Amaidas**¹ which read thus:

“9. This would clearly show that it is necessary to cite parties who would otherwise have an interest in the succession to the estate of the deceased. That would naturally include all the heirs of the deceased. Besides, Section 283 gives power to the District Judge as regards the issue of citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate. Necessarily therefore the facts on the basis of which the District Judge is required to exercise his discretion must be fairly placed before him. In this case the respondent had done nothing of the sort as we have already noticed.

10. The courts below also overlooked the fact that in their application for revocation the appellants had clearly stated that in other proceedings between the members of the family of Amaidas and the respondent

¹ (2005) 12 Supreme Court Cases 154

the Will had been successfully disputed. In the circumstances, for the respondent to say that the grant was being opposed by "nobody" was misleading. The grant was obtained by concealing from the court something which was very material to the case. The appellants were entitled to be heard and doubtless the District Judge would have directed to issue of citations to each of Amaidas's heirs on intestacy under Section 283(1)(c) of the Act had the true facts been revealed by the respondent in his application for grant of probate. The advertisement in this case was wholly insufficient to patch up the gross lacuna".

8] In the aforesaid background, since the petitioners, legal heirs have every right to contest Probate proceedings they ought to have been impleaded as defendants. That being so, order impugned passed below Exhibit 5 on 23/10/2019 by Civil Judge Senior Division, Ichalkaranji is hereby quashed and set aside. Application Exh. 5 stands allowed. Respondent is directed to implead petitioners as party defendants in the Probate proceedings. Mr. Prashant Kulkarni appearing for the petitioners waives service in the said Probate proceedings. As such, no fresh notice to the petitioners in the Probate proceedings is required. As such, petitioners are at liberty to file their

written statement in the Probate proceedings within period of 4 weeks from today.

9] Petition stands allowed in the above terms.

[NITIN W. SAMBRE, J.]

IRESH
SIDDHARAM
MASHAL

Digitally signed
by IRESH
SIDDHARAM
MASHAL
Date: 2022.01.19
12:01:57 +0530