

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3250/2022

Jagdish s/o Yugraj Rupareliya .vs. Chaya wd/o Mahesh Rupareliya and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N. B. Kalwaghe, Advocate for petitioner.
Mr. J. B. Kasat, Advocate for respondent nos. 1 to 4.

CORAM : AVINASH G. GHAROTE, J.
DATE : 27.07.2022

Heard Mr. Kalwaghe, learned counsel for
petitioner and Mr. Kasat, learned counsel for respondent nos.
1 to 4.

2. The present petition questions the order dated 20.10.2021 passed by the trial Court whereby the objections raised by the objector to the application by the respondents seeking for grant of legal heirship certificate on account of demise of one Mahesh Yugraj Rupareliya has been discarded as infructuous, on account of the objector Smt. Vijayabai w/o Yugraj Ruparelia (mother of the deceased Mahesh), having passed away on 01.08.2020 (page 81) and so also the order dated 01.04.2022, whereby the application below Exh.-30 filed by the petitioner seeking to be impleaded in place of the original objector Smt. Vijayabai on account of a will having been executed by her in his favour, has been rejected.

3. One Mahesh Yugraj Rupareliya, had passed on 25.04.2017, leaving behind him the present respondents, who are his wife and children as well as Smt. Vijayabai Yugraj Rupareliya (Mother) as the only Class-I legal heir. The present respondents filed an application under Regulation 2 of the Bombay Regulations, 1827 for grant of a legal heirship certificate. The mother was not made a party to these proceedings, as a result of which, the mother filed an objection to be impleaded and by an order dated 18.09.2018, the mother was added as the applicant no.5, whereas she should have been added as the opponent.

4. Thereafter, an application for amendment was filed by the original applicants (respondents herein), whereby the application was sought to be amended, seeking to place the fact about Late Mahesh having executed a will on 15.09.2012 in favour of the original applicant nos. 1 to 4 and raising the contention that applicant no.5, mother would thus not be the legal heir and ought not to be included in the legal heir certificate, which may be issued. The mother Smt. Vijayabai had filed an application for transposition as an objector (opposite party), as the original proceedings indicated that they were proceeded against 'Nil'. This application, however came to be rejected by order dated 11.03.2019 (page 52), being aggrieved by which, she filed Writ Petition No.2601/2019, which came to be allowed by this

Court, by judgment dated 05.02.2020 (page 54). As a result of which, the mother thereafter was transposed as objector/non applicant. Objections accordingly were raised by her under Exh.-28 on 06.03.2020 (page 66), to the application by the respondents. However, before the objections could be decided, she passed away on 01.08.2020, as a result of which, by the order dated 20.10.2020, the application at Exh.-28, came to be discarded as infructuous (page 95).

5. On 06.07.2021, an application at Exh.-30 came to be filed by the present petitioner, claiming that Late Vijayabai, the original objector, had executed a will in his favour on 14.01.2020, as a result of which, he became the legal heir of the deceased objector and, therefore, was entitled to be impleaded in her place. By the order dated 01.04.2022, this application also has been rejected.

6. Mr. Kalwaghe, learned counsel for the petitioner, submits that learned court below could not have discarded the objection Exh.28 as infructuous, without first deciding the entitlement of the petitioner, to be added in place of the original objector, in view of the application at Exh.-30. It is submitted that there is no adjudication of the plea raised by the petitioner and, therefore, on this ground, the impugned orders are liable to be quashed and set aside and the matter be remanded back to the learned court below.

7. Mr. Kasat, learned counsel for the respondents, vehemently opposes the contention and submits that due to the passing away of the original objector, nothing survived and since the provision of Code of Civil Procedure were not applicable, placing reliance upon Anita Anil Patil .vs. Malini Anant Patil,¹ there was no question of applying provisions of Order XXII of the C.P.C. and permitting the petitioner to be impleaded. He further submits that there is no provision in the Regulations, for adjudicating the title in question, so also adjudication of a claim under the will, considering which the proceedings insofar as Late Vijayabai was concerned, did not survive therefore the impugned orders were fully justified.

8. The provisions of the Bombay Regulations, 1827, are not intended to decide any questions of title in the property but merely declare as to who the legal heirs of a deceased person would be and in that respect issue an appropriate certificate to the party entitled to it. In case, there is a complicated question involved, the second part of Regulation 4, enjoins upon the court concerned to suspend the proceedings until the questions have been tried by a regular suit instituted by one of the parties.

9. What is however material to note is that recognition of a person as an heir, would entitle such person under Regulation 7 to manage the property and affairs of the deceased.

10. In a normal parlance, the expression “Legal Heir”, would denote the direct progeny of the person deceased and in light of section 8 of the Hindu Succession Act, the class-I legal heirs would in this case include mother also. The contention of Mr. Kasat, would have been correct, had the regulations stopped there. However, a perusal of the Regulation 1 and the subsequent regulations, indicate that what is contemplated by the legal heirship certificate is not only the persons categorized as class-I legal heirs in the schedule to section 8 of the Hindu Succession Act but also an executor and/or legal administrator to the property of the deceased, which would only mean, the person appointed as such under the will executed by the deceased. Had this not been so, the provisions of the Bombay Regulations, 1827, namely Regulations 1, 2, 7 would not have contemplated such an application being filed by an executor or an administrator. This being the position, a person claiming under a will by the deceased, as an executor/administrator would also fall within the definition of legal heir insofar as the Regulations are concerned.

11. In fact, Regulation 5 specifically recognizes this position and mandates that wherever an executor is formally recognized under the rule contained in Section 4, the authenticity of the will, if any, by which the executor is appointed, shall be proved and the certificates of executorship shall be endorsed therein. This being the position, in my considered opinion, the expression “Legal Heir” cannot be

given a restricted meaning insofar as the provisions of the Bombay Regulations is concerned.

12. **Anita Anant Patil** (*supra*) upon which reliance is placed by Mr. Kasat, learned counsel for the respondents, is on the proposition that consequent to death of a person claiming legal heirship certification, provisions of Order XXII of the C.P.C. would not be applicable, for the reasons that the proceedings under the Bombay Regulations, did not fall within the expression “Suit” and does not consider any provision of the Bombay Regulations and, therefore, would not shed any light on the issue in question.

13. In the instant case, even the respondents by way of the amendment, claim entitlement to the certificate under a will by the deceased Mahesh dated 15.09.2012. It cannot be disputed that the mother, being class-I legal heir had an equal right to get a legal heirship certificate during her lifetime recognizing her as one of the legal representatives of the deceased Mahesh. The recognition as such of a person as the legal heir under Regulation 7, confers certain entitlements upon the person who is recognized as such, and authorizes him, to do all acts and grant all deeds competent to a legal heir, executor or administrator, and also a right to sue and obtain judgment in any court in that capacity.

14. Though the original objector, Vijayabai, had expired, the petitioner, was raising a claim, regarding

entitlement to represent her, on the basis of the will executed by her. Instead of deciding that application on the basis of the law as applicable, the learned court below has merely rejected the application on the ground that since the original objector Vijayabai had passed away, the objections would be discarded.

15. In my considered opinion, that is not a correct procedure to be followed. In fact the learned court below ought to have first decided the application at Exh.-30 filed by the petitioner and based upon its result, proceed to decide the objections at Exh.-28. That having not been done, in my considered opinion, both the orders cannot be sustained. Hence, they are quashed and set aside. The matter is remanded back for decision as indicated above. No order as to costs.

JUDGE

kahale