

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

WRIT PETITION NO. 3531 OF 2022

Chandrabhaga Ramesh Sangale and anr__ Vs. __Varsha Sunil Sangale and anr

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

Court's or Judge's orders

Mr. P.A.Deshpande, Advocate h/f Mr. D.R.Khpore, Advocate for petitioners
Mr. K.S.Narade, Advocate for respondent Nos. 1 and 2

CORAM : AVINASH G. GHAROTE, J.
DATE : 10/11/2022

1] Heard Mr. Deshpande, learned counsel for the petitioner and Mr. Narwade, learned counsel for the respondents.

2] The petition challenges the rejection of the application under Section 10 of the CPC filed by the present petitioners in proceedings instituted under the Bombay Regulation VIII of 1927 by the Respondent Nos.1 & 2 for grant of legal heirship certificate, on the ground that the mother of the deceased who is the petitioner no.1 herein along with the father had also filed proceedings under Section 372 of the Indian Succession Act for a succession certificate by virtue of Civil Misc. Application No. 81/2021 before the learned CJJD, Lonar and therefore, the earlier proceedings instituted under the Bombay Regulation need to be stayed.

3] Mr. Deshpande, learned counsel for the petitioners submits that since the later proceedings under section 372 of the Succession Act contemplates grant of a succession certification, even on a prima facie basis, the earlier proceedings under the Bombay Regulation need to be stayed, as there was a dispute and in case of disputed question, the Court entertaining the proceedings under the Bombay Regulation was enjoined to stay its hands.

4] In so far as proceedings under the Bombay Regulation VIII of 1827 are concerned, these are summary in nature and are intended for formal recognition of the heirs of the person who died leaving properties, movable or immovable. The first part of Rule 4 of the Regulation indicates that the Court under the Bombay Regulation shall summarily investigate the grounds of the objections on the one hand, and of the right claimed on the other and examine such witnesses or other evidence as adduced by the parties and grant or refuse a certificate, as the circumstances of the case may require. The second part of Rule 4 confers a discretion upon the Court to suspend the proceedings in case from the evidence adduced it appears to the Court that the question at issue is a complicated or difficult nature, till such question has been tried by a regular suit instituted by one of the parties. Rule 8 makes it further clear that refusal of the certificate under the Bombay Regulation shall not finally determine the rights of the persons

whose application is refused, but it shall be competent to him to institute a suit for the purpose of establishing his claim.

5] As against the above, Section 372 of the Indian Succession Act permits the issuance of a certificate to an applicant therein in respect of the debts and securities applied for; Section 373 describes the procedure for determining such proceedings to be decided in a summary manner and sub-section (3) of Section 373 provides that if the judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be a person having *prima facie* the best title thereto.

6] What is material to note is that Section 390 of the Indian Succession Act makes the provisions of Sections 370(2), 372(1), Clause (f) and Sections 374 to 379, 381, 384, 387, 389 of the Indian Succession Act applicable to the proceedings under the Bombay Regulations VIII of 1827. It is thus apparent that the provisions of the Bombay Regulation as well as Chapter X of the Indian Succession Act operate in the same field to a limited extent, the point of distinction being that the Bombay Regulation by virtue of Regulation 1 is made

applicable even to immovable property, as against which the certificate to be granted under Section 374 of the Indian Succession Act is restricted to the debts and securities as contemplated by Section 372(1)(f), which would indicate that the Bombay Regulation operates in a wider field and arena and have a greater applicability than the provisions of Part X of the Indian Succession Act. It is in this context of a difference regarding the scope of operation of the two enactments, that the matter has to be viewed.

7] That apart, in the instant case it is apparent that the proceedings under the Bombay Regulation have been instituted earlier in point of time and the application filed by the petitioner no. 2 for impleading himself in those proceedings already stands rejected, which rejection has not been questioned any further, leading to a situation that in the proceedings under the Bombay Regulation, the widow, daughter and mother of the deceased Sunil Ramesh Sangale are the only contesting parties and considering the law applicable thereto, would be the only persons who would be entitled to a legal heirship certificate. Any claim which is being made by the petitioner no. 2 who is the father of the deceased, on account of the rejection of his application for impleadment cannot now be the subject matter of the proceedings under the Bombay Regulation, considering which I do not see any reason to stay the

proceedings under the Bombay Regulation on the ground that the subsequent proceedings initiated under Section 373 of the Indian Succession Act is pending. The petition therefore is without any merits and is dismissed. No costs.

8] Needless to say that this would not prevent the petitioner no. 2 in filing a substantive suit to agitate the right which he claims to have vested in him, being the father of the deceased.

JUDGE

Rvjalit