

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL REVISION APPLICATION NO. 80 OF 2022**

Akhileshwardas Guru Raghunathdasji

@ Janakidas Vaishnav

Age – 28 years, Occ – Mahant/Religious,

R/o Balaji Mandir, Subhash Road, ..APPLICANT
Parbhani, Dist. Parbhani (Orig. Respondent)

-VERSUS-

Mohan S/o Shaligram Sonawane

Age – 32 years, Occ : Service,

R/o Saraswati Nagar, Parbhani, ..RESPONDENT
Dist. Parbhani. (Orig. Petitioner)

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Mr. B.R. Waramaa – Advocate for applicant

Mr. A.S. Deshmukh – Advocate for respondent

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CORAM: GAURI GODSE, J.

RESERVED ON: 20th January 2023

PRONOUNCED ON: 11th April 2023

JUDGMENT:

1. This Civil Revision Application is filed to challenge the rejection of an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC"). The application under Order VII Rule 11 of CPC was filed by the Applicant on the ground that there was no cause of action to the Respondent for filing an application under Section 383 of the Indian Succession Act, 1925 ("the Act of 1925"). The said application under Section 383 of the Act of 1925 was filed by the Respondent praying for revocation of the heirship certificate issued in the name of the Applicant under the Bombay Regulation VIII of 1827 ("the Bombay Regulation").

2. The Applicant had filed an application under the Bombay Regulation for issuing an heirship certificate in his name, claiming to be the heir and legal representative of deceased Jankidas @ Raghunathdas Guru Sitaramdas Shrivaisnav ("Jankidas"), who expired on 2nd April 2019. The said heirship certificate was issued in the name of the Applicant on 4th January 2021.

3. The Respondent filed Civil Miscellaneous Application No.462 of 2022 in the Court of Civil Judge, Senior Division, Parbhani, under Section 383 of the Act of 1925, praying for revocation of the said heirship certificate issued in the name of the Applicant. Respondent filed the said application claiming to be a devotee of Lord Balaji and a permanent resident of Parbhani. He contended that the Applicant, by claiming himself as heir and legal representative of Jankidas, had got the certificate issued in his name. Respondent further contended that by misusing the heirship certificate, the Applicant got his name mutated in the land Gat No.155 and got the said land transferred in his name. Based on the said transfer, he illegally transferred the said property by executing a sale deed in favour of a third party. The Respondent learnt about the certificate on 28th January 2022 and, after obtaining the certified copies of the same, filed application for revocation of the heirship certificate. Thus, it was contended by the Respondent that he being a beneficiary of the Trust, was entitled to raise an objection and thus prayed for revocation of the certificate.

4. The Applicant appeared in the said revocation proceeding and filed an application under Order VII Rule 11 of CPC and prayed for rejection of the said application on the ground that there was no cause of action for the Respondent to file a revocation application. Applicant contended that the Respondent had not pleaded any right in his favour, and hence, there was no cause of action to file the revocation application. The Respondent raised an objection to the maintainability of the application on the ground that provisions of Order VII Rule 11 of CPC are not applicable to the application filed under section 383 of the Act of 1925. The Respondent also opposed the said Application on merits.

5. Learned Civil Judge, Senior Division, Parbhani, by Order dated 6th May 2022, rejected the application under Order VII Rule 11 of CPC. Learned Trial Judge held that in view of the law laid down by this Court in the case of *Deubai Tukaram Pakhre Vs Muktabai Pakhare*¹ the provisions of CPC are applicable to the proceedings under the Act of 1925. Learned Trial Judge held that the factual aspects with respect to whether the heirship certificate was obtained by fraud need

¹ 2000 (1) MH L.J. 511

to be decided after conducting the trial. The learned Judge further observed that revocation of an heirship certificate could be asked for on the grounds as prescribed under Section 383 of the Act of 1925. Hence, while deciding an application for revocation of the heirship certificate, it is necessary to decide whether the certificate was obtained in the proceedings, which were defective and/or making false allegations by concealment of material facts from the Court. The learned Judge held that the application for revocation could not be rejected without there being a trial. Hence, the application of the Applicant filed for rejection of the revocation application under the provisions of Order VII Rule 11 of CPC is rejected. Being aggrieved by the said Order, the Applicant has filed the present Civil Revision Application.

6. Learned counsel for the Applicant submitted that a person seeking to file an application for revocation of the heirship certificate must plead his right to seek revocation. A simple pleading with respect to the cause of action is not sufficient, and the cause of action should also include the rights of a person seeking to file an application for the

revocation of the certificate. Thus, it was submitted that the Respondent had not pleaded any right to file an application for revocation of the heirship certificate, and therefore, there was no cause of action to file the same. Hence, the revocation application needs to be rejected by applying the provisions under Order VII Rule 11(a) of CPC. In support of this contention, learned counsel for the Applicant relied upon the decision of this Court in the case of *Perviz Sarosh Batliwalla and another Vs. Viloo Plumber and another*². Thus, by relying upon the said decision, it was contended that the Respondent is not entitled to seek revocation of the heirship certificate unless he makes out a case of his right to do so.

7. Learned counsel for the Applicant further contended that the Respondent has a remedy available as per Section 41(E) of the Maharashtra Public Trust Act 1960 ("the Trust Act") with respect to the submissions made by him in his application for revocation of the heirship certificate. Therefore, the application for revocation of the heirship certificate is barred under Section 80 of the Trust Act. Hence on the said ground also, the application for revocation of the heirship

² 2000(3) Mh.L.J. 39

certificate was required to be rejected under Order VII Rule 11 of CPC.

8. Learned counsel for the Applicant further relied upon the heirship certificate that is issued in favour of the Applicant, which mentions that the Applicant required an heirship certificate for the benefit of various schemes of the Government in the name of Jankidas and hence, the applicant was recognized as heir and legal representative of Jankidas. Learned counsel further relied upon a Government Gazette, which shows the properties that were entered in the name of Shree Ram Mandir (Balaji Mandir) and Vitthal Murli Mandir Taluka Parbhani Trust. Thus, it was contended that even allegations made by the Respondent with respect to misuse of the heirship certificate had no merit, and the application for revocation was required to be rejected.

9. The learned counsel submitted that the Hon'ble Supreme Court, in the case of *Dahiben Arvinbhai Kalyanji Bhanusali (Gajra) (D) Through LRS and others*,³ has laid down parameters regarding the grounds available for rejection of the plaint under Order VII Rule 11 of CPC. He

³ (2020) 7 SCC 366

thus submitted that in view of the test laid down by the Hon'ble Supreme Court with respect to the meaning of cause of action, it was clear that in the application for revocation of the heirship certificate filed by the Respondent, there was no cause of action, in its real sense and hence the application for revocation is required to be rejected by applying the provisions of Order VII Rule 11(a) of CPC.

10. Learned counsel for the Applicant relied upon clause 337 of Chapter XIX of the Civil Manual and the last entry in the same, which is regarding an application under Special Acts. Learned counsel further relied upon Section 141 of CPC and contended that the provisions of Order VII Rule 11 of CPC apply to an application filed for revocation of the heirship certificate. In support of this submission, learned counsel for the Applicant also relied upon the decision of the Hon'ble Supreme Court in the case of *Jaswant Singh and others Vs. Prakash Kaur and others*⁴. Hence, the learned Trial Judge ought to have applied the provisions of Order VII Rule 11 of CPC and rejected the application for revocation of the certificate. Thus, it was submitted that the Civil Revision

⁴ 2017 AIR (SC) 5275

Application filed by the Applicant be allowed and the Application for revocation of the heirship certificate be rejected.

11. Learned Counsel for the Respondent supported the impugned Order by contending that the Application for revocation of the heirship certificate is not a plaint, and hence, provisions of Order VII Rule 11 of CPC will not apply. It was further submitted that the proceeding for grant of heirship certificate under the Bombay Regulation as well as the application filed for revocation of the same under Section 383 of the Act of 1925, is a summary proceeding, and hence the provisions of Order VII Rule 11 of CPC will not apply to the same.

12. Learned Counsel for the Respondent further relied upon the pleadings in the Application for revocation where he has specifically made out a case as to his right to challenge the same being a devotee of Lord Balaji and, therefore, the beneficiary of the Trust. Learned Counsel for the Respondent thus submitted that even if the provisions of Order VII Rule 11 of CPC are to be applied, a plain reading of the Application

for revocation very specifically makes out a case as to why the Application is filed and, therefore, there is a specific cause of action that is pleaded and hence the Application for revocation of heirship certificate cannot be rejected as prayed by the Applicant.

13. Learned counsel for the Respondent submitted that the Respondent is an individual, and therefore, being a beneficiary, he has applied for revocation of the certificate. The provisions of Section 41(E) of the Trust Act can be invoked by one or more persons, and therefore, there was no question of the Respondent being an individual to invoke the said provision. Thus, it was submitted that there was no merit in the submissions made on behalf of the Applicant, and the Civil Revision Application be dismissed.

14. I have considered the submissions made on behalf of both parties. I have perused the record of the Civil Revision Application. The objection of the Respondent on the applicability of the provisions of Order VII Rule 11 of CPC to the Application filed by the Respondent for revocation of the certificate issued under the Bombay Regulation is examined

by the learned Trial Judge. The learned Judge has held that in view of the law laid down by this Court in the case of *Deubai Pakhre*, the provisions of CPC are applicable to the proceedings under the Act of 1925.

15. So far as the merits of the Application filed under Order VII Rule 11 of CPC is concerned, it is the submission of the Applicant that since the Respondent has not pleaded his right to object to the issuance of the heirship certificate, there is no cause of action for filing an application for revocation. The Application filed under Section 383 for revocation of the heirship certificate specifically states that the Respondent is a devotee of Lord Balaji and, therefore, a beneficiary of the Trust and since the Applicant misused the heirship certificate and transferred the property to a third party, Respondent filed an application for revocation of the certificate. A plain reading of the Application filed by the Respondent shows that the Respondent has pleaded with respect to his right and cause of action for filing the said Application. Whether the right of the Respondent as pleaded and/or the cause of action as pleaded has any merit or not, will be decided after examining the pleadings and evidence. Hence, the proposition laid down

by this Court in the case of *Perviz Sarosh Batliwalla* is of no assistance to the Applicant at this stage. The application cannot be rejected at the threshold by invoking the provisions of Order VII Rule 11(a) of CPC.

16. With respect to the second submission made by the learned counsel for the Applicant, that since the Respondent has a remedy under section 41(E) of the Trust Act, the application filed for revocation of the heirship certificate is required to be rejected under clause (d) of Rule 11 of Order VII of CPC, has no merit. Clause (d) of Rule 11 of Order VII of CPC can be invoked only in the case the plaint/application is barred by any law. There is no such bar provided under the provisions of the Trust Act. Hence, the application filed by the Respondent for revocation of the heirship certificate cannot be said to be barred under Section 41(E) of the Trust Act.

17. Learned Counsel for the Applicant contended that the decision of the Hon'ble Supreme Court in the case of *Basanti Devi Vs. Raviprakash Ramprasad Jaiswal* supports the case of the Applicant. The Hon'ble Supreme Court, in the case of *Basanti Devi*⁵, has held in paragraph 23 as under :-

⁵ 2007 (11) SCR 444

“23. It is now well settled that an application for grant of probate is a proceeding in rem. A probate when granted not only binds all the parties before the Court but also binds all other persons in all proceedings arising out of the Will or claims under or connected therewith. Being a judgment in rem, a person, who is aggrieved thereby and having had no knowledge about the proceedings and proper citations having not been made, is entitled to file an application for revocation of probate on such grounds as may be available to him. We are, therefore, of the opinion that the application for revocation of the grant of probate should have been entertained.”

18. Thus, as held by the Hon'ble Supreme Court in the case of *Basanti Devi*, a grant of probate is a judgment in rem. Hence, a person who is aggrieved thereby and having had no knowledge about the proceedings and proper citations having not been made is entitled to file an application for revocation of probate on such grounds as may be available. Thus, if the same proposition is applied to the present case, the

Respondent has, in fact, pleaded in his Application for revocation of the heirship certificate as to the manner in which he learnt about the said heirship certificate as well as the reason for seeking revocation of the same. Hence, the proposition as laid down in the case of *Basanti Devi*, if made applicable to the present case, it cannot be said that the Respondent is not entitled to seek revocation of the heirship certificate issued in the name of the Applicant. Whether the grounds raised by the Respondent for revocation of the certificate has merit or not cannot be decided summarily by a plain reading of the application, and the same would require trial; hence, the application cannot be rejected by invoking the provisions of Order VII Rule 11 of CPC.

19. The learned Counsel for the Applicant has relied upon the decision of the Hon'ble Supreme Court in the case of *Dahiben*. The Hon'ble Supreme Court, in the case of *Dahiben*, has interpreted the meaning of cause of action in paragraph 24. A perusal of the Application in the present case indeed shows that all the ingredients required for pleading a cause of action are present. The Hon'ble Supreme Court, in paragraph 23.5 of its judgment in the case

of *Dahiben*, has held that the power conferred on the Court to terminate a civil action is a drastic one, and thus, the conditions enumerated in Order 7 Rule 11 of CPC are required to be strictly adhered to. Thus, the Hon'ble Supreme Court has very specifically held that the power under Order VII Rule 11 of CPC for rejecting the plaint cannot be exercised in a casual manner. Hence, for the purpose of deciding the application under Order VII Rule 11 CPC, there is no question of going into the merits of the cause of action that is pleaded.

20. Without going into the issue of maintainability of the Application filed under Order VII Rule 11 of CPC, I have examined the merits of the Application filed by the Applicant. As I am confirming the impugned Order on merits, it is not necessary to go into the wider question of the applicability of Order VII Rule 11 of CPC to an Application filed under Section 383 of the Act of 1925 and the same is kept open.

21. There is no merit in the submissions made on behalf of the Applicant. There is no illegality and/or perversity in reasons recorded in the impugned Order. Hence, in the

limited jurisdiction under Section 115 of CPC, I do not find any reason to interfere with the impugned Order. For the reasons stated above, the Civil Revision Application is dismissed.

(GAURI GODSE, J.)

22. At this stage learned Advocate for the applicant is requesting to pass necessary direction for deciding the application before the trial Court within a stipulated time. There is no order passed granting stay to the proceeding before the trial Court. The applicant is at liberty to make appropriate application for expeditious hearing before the concerned trial Court.

(GAURI GODSE, J.)