

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9725 OF 2023

Vivek Vishwanath Nawal Petitioner

Versus

Sau. Vandana Sunil Maniyar Respondent

.....
Mr. Mangesh G. Patil, Advocate for the Petitioner

Mr. A.K. Gawali, Advocate for the Respondent
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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 22nd AUGUST, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by learned Joint Civil Judge, Junior Division, Jalgaon, below Exhibit-36 in Civil Misc. Application No.739 of 2021, thereby rejecting the objection filed by the petitioner.

2. The respondent filed Civil Misc. Application No.739 of 2021 under Clauses 2 and 3 of the Bombay Regulation VIII of 1827 for getting heirship certificate of deceased Gopaldas Radhakisan (Radhakrushna) Nawal, claiming to be his daughter. In the said application, objection was filed by the son of the petitioner namely, Govind Vivek Nawal. In reply to the objection, the respondent stated that, she is a biological

daughter of Ramesh Kashinath Nawal, i.e. nephew of deceased Gopaldas, however, she was adopted by deceased Gopaldas and her entire education, marriage and *Kanyadan* was done by the deceased Gopaldas. Therefore, she is the legal heir of the deceased Gopaldas. The said objection was rejected by the Trial Court on 21/11/2022. Thereafter, the present application Exhibit-36 is filed by the petitioner claiming that he is the nephew of deceased Gopaldas, and deceased has executed registered will deed dated 16/12/2021 and gave his share to the nephews namely, Satish Nawal and Ramesh Nawal. But, both of them are dead, that will deed was not effected/brought in force, and therefore, share of deceased Gopaldas needed to be allotted to all his heirs equally. Therefore, he being legal heir of deceased Gopaldas is a necessary party. In support of the application, he filed affidavit/photocopy of will deed dated 06/12/2011 and verified copy of his Aadhaar card.

3. The application was opposed by the respondent by filing a detail say contending that, only to prolong the matter and defeat the rights of the respondent, the application is moved. Paper publication in the matter was done on 23/12/2021 calling upon objections in daily 'Divya Marathi'. Objection is required to be filed within one month, and the

petitioner has filed application after delay of 14 months. Earlier, son of the petitioner namely, Govind Vivek Nawal has moved the same type of application, in which will deed was not mentioned, and it was rejected on merits. The beneficiaries of will deed never claimed their rights on the basis of will deed, and the petitioner is not Class-I heir of deceased Gopaldas, and therefore, he has no right to file application. The Trial Court has rejected the application. Hence, the present petition.

4. Heard the learned advocate for the petitioner and the learned advocate for the respondent. Perused the writ petition memo, annexures thereto, impugned order and the citation relied upon by the learned advocate for the petitioner.

5. It is a matter of record that earlier application Exhibit-15 filed by the son of the petitioner, raising same contention, is rejected on merits. The said order is never challenged by the petitioner or by his son. Therefore, the present application Exhibit-36 is filed after delay of 14 months, is rightly rejected by the Trial Court by holding that, the petitioner is not a beneficiary of will deed, on which reliance is placed by him. He has no concern with the will deed. The respondent has filed verified copy of her school leaving

certificate, Aadhaar card and PAN card, showing name of her father as Gopaldas Radhakisan Nawal (deceased). Even as per the pedigree filed by the petitioner, he is shown to be the son of Vishwanath and nephew of deceased Gopaldas. Therefore, he is admittedly not Class-I heir or legal heir of deceased Gopaldas. In these facts, the Trial Court was of the view that the petitioner and his son are trying to prolong the proceeding.

6. It is the contention of the petitioner that he has filed Regular Civil Suit No.180 of 2023 claiming 1/4th share, which is filed on 07/08/2022. On the basis of this suit, it is the contention of the petitioner that in terms of Clause 2 of Rule 4 of the said Regulations, the Trial Court ought to have stayed the proceeding. Clause 2 of Rule 4 states that, if the question at issues between the parties is of a complicated or difficult nature, it should be left for the adjudication of Regular Civil Suit instituted by one of the parties, and the Trial Judge may suspend proceedings in the application for a certificate. The said contention is not acceptable for the reason that when the application was rejected on 06/05/2023, at that time, no suit was filed by the petitioner was pending. Therefore, filing of the suit appears to be after thought act on the part of the petitioner.

7. In *Baban Ramchandra Shukla and others V. Parag Arvind Shukla and another* [Civil Revision No.91 of 2016 (Nagpur Bench)], the learned Single Judge of this Court has held that, if the questions to be decided are complicated, then the Trial Court should stay the proceeding and wait till the decision of the Civil Suit.

In the present case, there was no such evidence before the Trial Court to grant stay to the proceeding till the civil suit is decided as the civil suit is filed subsequently. Hence, these observations are of no help to the petitioner.

8. Apart from that, mere issuance of heirship certificate does not give any right to the respondent to claim share in the property. In that view of the matter, no prejudice is likely to be caused to the petitioner even if heirship certificate is issued in favour of the respondent. The petitioner can vindicate his rights in the suit filed by him. The Trial Court has passed a reasoned order and has rightly rejected the application Exhibit-36. There is no illegality or perversity in the order impugned in the present petition. No jurisdictional error or

error of law committed by the Trial Court, while rejecting the application. The writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane