

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.105 OF 2013

1. Vatsalabai Govindrao Biradar,
Age: Major, Occu.: Household,
R/o.: Hanchnal, Tq.: Deoni,
District: Latur
 2. Deelip Govindrao Biradar,
Age: Major, Occu.: Agri.,
R/o.: Hanchnal, Tq.: Deoni,
District: Latur
- .. Petitioners
(Orig. Obj. Petitioner)**

Versus

1. Kushwarta Govindrao Biradar,
Age: 47 years, Occu.: Household,
R/o.: Hanchnal, Tq. Deoni,
District: Latur
2. Asha Govindrao Biradar,
Age: 21 years, Occu.: Education,
R/o.: Hanchnal, Tq.: Deoni,
District: Latur
3. Deepali Govindrao Biradar,
Age: 15 years, Occu.: Education,
R/o.: Hanchnal, Tq.: Deoni,
District: Latur
4. Vikram Govindrao Biradar,
Age: 12 years, Occu.: Education,
R/o.: Hanchnal, Tq.: Deoni,
District: Latur

[Resp. No.3 and 4 minors U/g of their
Mother i.e. resp. No.1] **.. Respondents**

...

Advocate for Applicant: Mr. A. V. Indrale Patil
Advocate for Respondents No.1 to 4:
Mr. R. R. Deshmukh h/f. Mr. R. B. Deshmukh

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CORAM: ARUN R. PEDNEKER, J.

Reserved on: 07.07.2023

Pronounced on: 28.07.2023

JUDGMENT:

1. Heard.

2. By the present civil revision application the applicants are challenging the order dated 03.02.2012, of the appellate court passed by the Adhoc District Judge-1, Udgir thereby challenging the order passed by the Civil Judge, Senior Division, Ahmedpur dated 13.04.2006, whereby the Civil Judge, Senior Division, Ahmedpur has granted declaration that the objection petitioners no.1 and 2 namely Vatsalabai and Deelip and applicants no.2 to 4 namely Asha, Deepali and Vikram are the legal heirs of deceased Govindrao and pleaded to issue heirship certificate to them except applicant no.1 - Kushwarta.

In the present civil revision application they are the applicants no.1 and 2 and respondents no.2 to 4, who had got the heirship certificate except respondent no.1 - Kushwarta herein.

3. The applicants are challenging the order passed by the Civil Judge, Senior Division, for the reason that the applicants had applied earlier for heirship certificate and the heirship certificate was granted in favour of the applicants and that it was not permissible for the Civil Judge, Senior Division to re-grant heirship certificate, when an earlier heirship certificate was earlier granted. Mr. A. V. Indrale Patil, learned counsel for the applicants also relied upon the judgment of the Hon'ble Supreme Court in the case of Madhvi Amma Bhawani Amma Vs. Kunjikutty Pillai Meenakshi Pillai, AIR 2000 SC 2301, at paragraph no.19, which reads as under:-

"19. So we have no doubt to hold that any decision made in the proceeding under Section 372, for the grant of Succession Certificate under the Indian Succession Act, would not bar any party to the said proceeding to raise the same issue in a subsequent suit. Hence, the High Court fell into error in applying the principle or res judicata to the second appeal of the appellant arising out of aforesaid suit. Thus even if no appeal is preferred by the appellant against the decision of the trial Court arising out of proceedings for the grant of Succession Certificate, the principle of res judicata would still not apply..."

4. Relying upon the aforesaid paragraph, the learned counsel for the applicants submits that the earlier certificate granted to the appellants is ultimately subject to the decision of the Civil Court in a civil suit and the certificate is merely granted to deal with the assets of the deceased and no rights have created in whose favour the succession certificate is granted.

5. He further submits that suit for partition is pending between the parties. It is his instructions that the suit is also dismissed in default. It is further contention of the applicants that the decree of the civil court will ultimately determine the validity of the certificate or the outcome of the rights between the parties and the heirship certificate granted ought not to have varied the earlier certificate granted by the court.

6. Per contra, Mr. R. R. Deshmukh holding for Mr. R. B. Deshmukh, learned counsel appearing for the respondents submits that as per section

300 of the Indian Succession Act, 1925 that the applicants are not harmed if the certificate is granted. The learned counsel further submits that, the earlier succession certificate was obtained without giving the names of the present respondents as being the heirs of the deceased and that the court was misled by the applicants. It is not the case of the applicants that it was brought to the notice of the court that the deceased father had other three children i.e. the respondents no.2 to 4 and their names were mentioned in the earlier application. The earlier order was obtained by misrepresentation and, as such, the court was entitled to reverify the same and issue a fresh certificate in favour of the applicants as well as respondents no.2 to 4. The learned counsel for the respondents relied upon the judgment of this court in the case of Baban Ramchandra Shukla and others Vs. Parag Arvind Shukla and another, dated 30.06.2017 to contend that the grant of heirship certificate is only a formal recognition of the heirs for the purpose of

the management of the property left behind by the deceased. The grant of heirship certificate is only a formal recognition of the heirs for the purpose of management of the property left behind by the deceased. Heirship certificate does not affirm any rights or liability on the person in whose favour it is granted. It only indicates the person who for the time being is in legal management of the property and that the heirship certificate shall not finally determine or ensure the rights of any person and, as such, certificate shall be given by the District Court upon who has preferable rights.

7. On challenge, the appellate court has examined at page no.29, para 7, as under:-

"7. Thus in my opinion the present applicants along with respondents no.2 to 4 are legal heirs and successors of deceased Govindrao as per section 16 of the Hindu Succession Act. Therefore, in such circumstances, the objection U/S 7 of the Bombay Regulation Act, 1827 filed by the present applicant before the learned lower court in Misc. Application No.8 / 2004 deserves to be rejected and rightly the learned lower court has not considered the same, in the light of above evidence documents on record."

8. Having considered the rival submissions it is to be noticed that the applicants so also respondents no.2 to 4 are legal heirs of the deceased. This position is not disputed by the parties. The only contention raised is that once a certificate is granted it could have not been modified and should have been subject to the outcome of the civil suit. Undisputedly, the earlier application filed does not find the names of the respondents in the application. When it was brought to the notice of the court by subsequent application that the names are not there, when the respondents themselves applied independently in the succession certificate and the notice was given in the press for the succession certificate and the applicants objected to the same, it was noticed by the parties that there was earlier succession certificate and that in the earlier succession certificate names of the respondents are not mentioned and, thus, the court exercised the powers under the Bombay Regulation Act, 1827 and granted a fresh certificate in favour of the

applicants as well as respondents no.2 to 4. The respondents no.2 to 4 being the children of the deceased of whom the succession certificate is claimed. Since the certificate is ultimately subject to an outcome of the civil court, I see no reason to interfere in the succession certificate granted. The court under section 378 of the Indian Succession Act, 1925 entitled to alter the succession certificate granted. However, while doing so the court ought to have re-called the earlier certificate granted. Thus, the earlier certificate granted in favour of the applicants dated 27.02.2023, is re-called. The certificate granted on 13.04.2006, contains the names of the applicants and respondents no.2 to 4 is maintained.

9. Thus, I see no merit in the civil revision application and the same is dismissed, with above observations.

[ARUN R. PEDNEKER, J.]

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