

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISCELLANEOUS CIVIL APPLICATION NO. 292 OF 2021

PUSHPA EKNATH MAHAJAN
VERSUS
USHA JAGANNATH PATIL AND OTHERS

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Mr. B.S. Shinde – Advocate for Applicant

Mr. A.M. Gholap – Advocate for Respondent Nos.1, 2 and 4

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 31st March, 2023

PER COURT :

1. Heard rival submissions.
2. The applicant is seeking transfer of Probate Application No.3 of 2021 filed by her under Section 276 of the Hindu Succession Act, 1925 against the respondents from the Court Civil Judge Senior Division at Bhusawal, Dist. Jalgaon to the Court of Civil Judge Senior Division at Kalyan, Dist. Thane.
3. According to the applicant, she and respondents are real brothers and sisters. Their mother Vastalabai was residing with the present applicant in her old age and the applicant used to take care of her. Prior to her death mother of applicant executed a Will in favour of applicant and bequeathed her

agricultural lands situated at village Savkheda, Tq. Rawer, Dist. Jalgaon to the applicant. After the death of her mother applicant filed aforesaid probate application in the Court of Civil Judge Senior Division at Bhusawal, since those lands were in the jurisdiction of Bhusawal Court.

4. Now the applicant is claiming that, she is 70 years old and suffering from various ailments and therefore, unable to travel distance of around 450 Kilometers to attend the dates at Bhusawal Court from Kalyan. According to her, the respondent no.3 resides at Kalyan and therefore, it would be easier for the other respondents to attend the dates at Kalyan, if the probate proceeding is transferred. She has also claimed that, respondent nos.1 and 2 have threatened her to withdraw the probate proceeding and therefore, she was constrained to file N.C. report at Kolsewadi Police Station, Kalyan against them. As such, she has claimed such transfer.

5. During the pendency of this application, the name of respondent no.3 has been deleted by the applicant. On the contrary, the respondent nos.1, 2 and 4 strongly resisted the

application by filing an affidavit-in-reply and thereby contended that, the present application is only a counter blast to the transfer application filed by them before the Principal District Judge, Jalgaon bearing M.C.A. No. 243 of 2021, whereby request is made to club the instant probate proceeding with R.C.S. No. 54 of 2021 filed by them.

6. The learned counsel for the contesting respondents raised primary objection that, the deletion of respondent no.3 at the hands of applicants itself has made the present application non-maintainable since, all the parties of the transfer application need to be served and thereafter heard. However, apart from such technical objection it is clearly evident that, the respondent nos.1 and 2 have filed Regular Civil Suit No.54 of 2021 against the remaining parties including the applicant for declaring the Will executed in favour of the applicant as null and void, in the court of Civil Judge Junior Division, Raver wherein, the applicant has already appeared. Further, it is evident that, the deleted respondent no.3 has also instituted a Civil Suit bearing Regular Civil Suit No. 44 of 2017 for partition and separate

possession against the other parties including their father, who was alive at the relevant time. The said suit is also pending in the Court of Civil Judge Junior Division, Raver and the applicant has already appeared therein. Thus, it can be seen that in respect of the properties mentioned in the Will two other civil litigations are already pending, which are to be attended by the present applicant at Raver. Under such circumstances, it is highly difficult to understand that, how the applicant can claim transfer of only one petition i.e. Probate Petition filed at Bhusawal. Even it is transferred to Kalyan then she will have to come to Raver for attending other proceedings. Moreover, it appears that, the future decisions in all these proceedings are inter-dependent upon each other and therefore, all the proceedings are required to be decided by one and the same Court. The applicant cannot adopt such pick and choose method for transferring only one petition to some other place. Further, the proceedings which are going on at Raver cannot be transferred, considering the jurisdictional aspect since the lands are situated in the vicinity of Raver and Yawal Talukas.

7. As such, by claiming transfer of only one petition out of these three proceedings clearly indicates the *malafide* intention of the applicant. So far as health ground raised by the applicant is concerned the respondents are also of equal age to that of her and, therefore, the inconvenience caused to them on account of such transfer would be the same like applicant. Considering all these aspects, I am not inclined to grant transfer as claimed by the applicant and therefore, pass following order :

ORDER

- a. The Miscellaneous Civil Application stands rejected.
- b. It is made clear that, the learned Principal District Judge at Jalgaon shall decide the transfer application bearing Miscellaneous Civil Application No. 243 of 2021 on its own merits and without being influenced by the observations made in this order.

[SANDIPKUMAR C. MORE]
JUDGE

Pooja Kale