

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 141 OF 2022

1. Smt. Anjana w/o Laxman Thorat
age 47 years, occ. Service
2. Mangesh s/o Laxman Thorat
age 30 years, occ. Service
3. Mahesh Laxman Thorat
age 28 years, occ. Service.
4. Dhondabai Vishwanath Thorat
age 73 years, occ. Pensioner

All r/o F-15/4, A-120, N-6, CIDCO
Aurangabad, Tq. & Dist. Aurangabad.

Applicants

Versus

1. Ranjana w/o Laxman Thorat
age 48 years, occ. HH
2. Pratik s/o Laxman Thorat
age 19 years, occ. Education

Respondents No. 1 and 2 r/o Siddarhthnagar
Near T V Center, Aurangabad
Tq & Dist Aurangabad.

3. The State of Maharashtra
Through Collector, Aurangabad.

Respondents

Mr. N. T. Tribhuwan, Advocate for the applicants.
Mrs. P. V. Diggikar, AGP for the State.
Mr. Rahul Joshi, Advocate for respondents No. 1 and 2.

CORAM : R. M. JOSHI, J.
RESERVED ON : 3rd APRIL, 2023.
PRONOUNCED ON : 20th APRIL, 2023.

JUDGMENT :

1. This application is filed under Section 115 of the Code of Civil Procedure challenging the order dated 19th July, 2002, passed by District Judge – 7, Aurangabad in Regular Civil Appeal No. 57/2021 whereby Civil M.A. No. 1075/2018 was remitted back to the Trial Court for hearing afresh. The parties are referred to by their nomenclature in the original application.

2. Applicants in Civil M.A. No. 1075/2018 are the wife, children and mother of deceased Laxman Thorat who died on 6th November, 2014. Deceased Laxman was employed with Aurangabad Municipal Corporation. Respondent No. 2 is the second wife of Laxman and respondent No. 3 is son begotten from the said relationship. It is specifically stated that applicants and respondents No. 2 and 3 are lawful heirs of deceased and except these persons there are no other heirs of the deceased. Application was made for obtaining succession certificate to receive total sum of Rs. 1,44,050/-

which was due and payable on account of death of deceased Laxman. Heirship certificate is sought in the name of Applicant No. 3 Mangesh in order to enable him to apply for employment on compassionate ground. It is also stated in the application that heirship certificate be issued in favour of respondents No. 2 and 3 in order to enable them to receive family pension of the deceased.

3. Learned Trial Court passed order dated 24th March, 2021, whereby succession certificate was issued in favour of applicants and respondent No. 3 Pratik Laxman Thorat to enable them to receive sum of Rs. 1,44,050/- and heirship certificate was issued in the name of Mangesh Laxman Thoarat.

4. This order was challenged by filing Regular Civil Appeal No. 57/2021. The appeal was filed on the ground that the Trial Court has ignored the statements of oath of respondent No. 2 while arriving at conclusion by ignoring the terms of settlement amongst the parties. Predominantly, on this ground amongst others, the said order was challenged. The First Appellate Court passed the impugned order whereby Civil M.A. No. 1075/2018 was referred to the Trial Court for re-hearing.

5. Learned First Appellate Court has observed that the statements of respondent No. 2 as well as applicants on oath are not challenged as they were not examined by the parties. It is also observed that the Trial Court has ignored the mediator's report and compromise deed incorporated therein while adjudicating the controversy involved in the application. It is stated that there is no reference either about acceptance or rejection of the terms of settlement amongst the parties. What prompted the First Appellate Court to relegate the application back to the Trial Court is that the factum of verification of terms and conditions of settlement are not dealt with by the Trial Court and the same could not be done by the First Appellate Court for want of presence of parties before it.

6. Applicants before the Trial Court were candid to state that respondent No. 2 is the second wife of deceased Laxman and respondent No. 2 is the son of Laxman begotten from the said relationship. Though the applicants have recorded their no objection for issuance of heirship certificate in favour of respondents No. 2 and 3 for enabling them to receive family pension of the deceased, the question arose before the Trial Court is as to whether respondent No. 2 could be considered as legal heir of the deceased. Order of the Trial

Court indicates that the said aspect was dealt with and finding is also recorded to that effect. It is specifically held by the Trial Court that though respondent No. 3 has a right in the property of deceased Laxman, however, respondent No. 2 being not legally wedded wife of Laxman, cannot be considered as his legal heir. Consequently, Trial Court has issued succession certificate in favour of applicant No. 1 and heirship certificate to applicant No. 3.

7. Through Trial Court declared that respondent No. 3 is legal heir of the deceased but it is escaped from consideration of Court that by virtue of agreement between parties, heirship certificate was to be issued in favour of respondent No. 3 to claim family pension of deceased. In any event, since such certificate is not issued by Trial Court in favour of respondent No. 3, inspite of he being held legal heir of deceased, the application deserves to be relegated back to the Trial Court for its determination in accordance with law.

8. This Court, therefore, finds no propriety in causing interference in the impugned order of remand passed by Appellate Court. Hence, application stands dismissed. No order as to costs.

9. Pending civil application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb