

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

CIVIL REVISION APPLICATION NO. 216 OF 2017

Yusufunissabegum @ Fauzia Tanvir w/o
Manzarur Hasan Bazmi,
Age : 70 Years, Occ. Agriculture & Household,
R/o. Ambajogai at present Hyderabad
through her General Power of attorney
holder Ravindrakumar Munnalal Pardeshi
Age : 46 Years, Occ. Business,
R/o. Guruwarpeth, Ambajogai, Dist. Beed.

Yusufunissabegu @ Fauzia Tanvir w/o Manzarur
Hasan Bazmi,
Since deceased through LR's

1. Fareeda W/o Asadullah Khan Tanveer,
Age : Major, Occ. Household,
R/o. Hyderabad at present
R/o. Elmhurst, New York, U.S.A.
through their Genera Power of attorney
holder mr. Ravindrakumar S/o Munnalal Pardeshi,
R/o. Guruwarpeth, Ambajogai, Dist. Beed. .. Appellant
(Orig. Plaintiff)

V E R S U S

1. The Municipal Council,
Through Sudhakar S/o Tukaram Jagtap,
Chief Officer, Municipal Council,
Ambajogai Tq. Ambajogai, Dist. Beed. ..Respondent
(Orig. Defendant)
2. Mahemood s/o Maheboobkhan Pathan,
Age : Aduylt Occ. Business,
R/o. Ambagogai, Dist. Beed.
Deleted as per order dated 12.3.2018

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Advocate for the applicant : Mr. V.R. Dhorde with
S.P. Nimbalkar
Advocate for respondent No.1 : Mr. V.V. Bhavthankar

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CORAM : S. G. MEHARE, J.
DATE : 03.10.2023

JUDGMENT :

1. Heard the learned counsel for the appellant and the learned counsel for the respondent No.1 Municipal Council.
2. This revision has been preferred against the Judgment and order of the learned Civil Judge, Senior Division Ambajogai, passed in Misc. Civil Application No. 11 of 2003 on 15.11.2006 and the Judgment and order in RCA No. 84 of 2006 of the learned District Judge-1 at Ambajogai, dated 10th July 2017.
3. The parties would be referred to their original position as the “applicant” and the “respondent”.
4. The applicant claimed the legal heirship certificate under Bombay Regulation VIII of 1827, claiming to be the sole legal heir of Dost Mohammad Khan Nagad, who was her grandfather. She was the daughter of his son. The enquiry on the application of the applicant was made. The respondent appeared and objected to her application on the ground that the Municipal Council acquired the immovable property bearing Survey No. 612 of village Ambajogai, and she has no right, title or interest in the said immovable property. It is also the fact

that before this application, the objector Municipal Council had filed a Regular Civil Suit 227/1975 for eviction against the tenant in the said land owned by her grandfather. In the said suit, the present applicant was the defendant. However, instead of appearing in person in the said suit, she appeared through her power of attorney. In that suit, the Civil Court held her sole legal heir of her grandfather, namely Dost Mohammad Khan Nagad.

5. The suit filed by the Municipal Council was decreed. She had preferred an appeal. It was also dismissed. She has preferred the Second Appeal No. 69/2020 before this Court. The learned counsel for the Municipal Council made a statement at the bar that the Second Appeal No. 69 of 2000 has been decided and the matter was remitted to the trial Court granting an opportunity to the Municipality prove the title. However, he does not know about the progress of that suit.

6. The question as has been raised before this Court is :-

Under the jurisdiction of Bombay Regulation Act VIII of 1827, can the Court again deal with the issue of legal heirship against the findings recorded by the Civil Court, which has attained the finality?

7. The learned Civil Judge discarded the claim of the applicant on the ground that till the filing of the application, she did not take any action against any person in respect of the suit property, inter alia Municipal Council Ambajogai, who had claimed that the property survey No. 612 was acquired long back and after acquisition, it was allotted to the various persons, Advocates, Banks, Government Offices, etc. It has been further observed that the evidence of the witnesses is inconsistent. It appears that the witness of the present applicant P.W. No.2 Munalal Pardeshi, had admitted the construction of the building on the disputed land, and he was confused about the year of the construction of the building on the said land. Therefore, it was held that the applicant, Yusufunissabegum, failed to prove that she is the legal owner of land survey No. 612, being a legal heir of the deceased Dost Mohammad Khan Nagad.

8. The Appellate Court declined to grant the certificate of heirship accepting the finding of the earlier suit between the same parties but disbelieved her as legal heir by observing that no doubt, she may have a claim that she is the legal heir of Dost Mohammad Khan Nagad as a granddaughter but her unawareness about the relatives of Dost Maheboob Khan Nagad and the details of Survey No, 610,

612 and keeping mum for fifty years creates doubt about her relationship with Dost Mohammad Khan Nagad.

9. The learned counsel for the applicant would submit that both Courts have exceeded their powers under the Bombay Regulation of 1827. The competent Civil Court in R.C.S. No.227/1975, filed by the respondent Municipal Counsel, has held her as the sole legal heir of the deceased Dost Mohammad Khan Nagad. Therefore, it was a bare formality to issue an heirship certificate under the said Act for the purpose of recognition as a legal heir of Dost Mohammad Khan Nagad. Since she could not represent the deceased Dost Mohammad Khan Nagar without recognition of the Court, she had applied under the said Act for a legal heirship certificate. He has also argued that the interest in the property, whatever it may be, has no concern with the right of the applicant to claim the legal heirship. To bolster his argument, he relied upon the case of *Group Grampanchayat Vs. Sunanda Shamrao Bandishti and others and others 2011 (5) Bombay C.R. 162*, and prayed to allow the application and issue legal heirship certificate in her favour.

10. The learned counsel Mr. V. V. Bhavthankar, for the contesting respondent Municipal Council, has opposed the application and vehemently argued that in an enquiry before the Court, she could not

satisfy that she was the legal heir of Dost Mohammad Khan Nagad. A specific enquiry was made before issuing the certificate. Both Courts have correctly held that she had no concern with the property survey No. 612. He admitted that the Municipal Council had filed a civil suit claiming title over the property Survey No. 612, and finally, it has been remitted to the trial Court for fresh adjudication. Hence, the findings recorded therein are not binding upon the Municipal Council. A detailed enquiry was made, and both the Courts appreciated the evidence and disbelieved that she was the legal heir of Dost Mohammad Khan Nagad.

11. It is not disputed that the first suit filed by the Municipal Council was against the present applicant, contending that she had an interest in survey No. 612. The Civil Court held her as the sole legal heir of her grandfather, Dost Mohammad Khan. Two judgments were in favour of the Municipal Council, and the High Court in the Second Appeal against those Judgments, remitted the matter back for a limited issue of producing the title document of the Municipal Council. It is also not disputed that the finding in the suit by the Municipal Council against her, regarding her heirship, was not disturbed by any Court as she was a party interested in the suit property survey no. 612.

12. The Bombay High Court, in the case of Group Grampanchayat, cited (supra) in para No.5 has held that “Bombay Regulation VIII of 1827 (for short the Regulation) was issued on 1st January 1827 to provide for formal recognition, of heirs, executors and administrators and appointment of administrators and Managers of the property by Courts. In the said case, the Judgment of the Division Bench in *Aloysius Manuel Dsouza and Others vs. Mary Kamala William Manuel Dsouza* 2, 2006(6) Bom.C.R. 56(O.S.) was also referred to. In the said Judgment, this Court has held that the grant of an heirship certificate does not establish the right of the party in the property of the deceased by itself. The rights, if any, of a person claiming ownership in the property of the deceased are not taken away by granting an heirship certificate to an heir. On the other hand, clause 7 of the said Judgment makes it clear that an heirship certificate holder is accountable to all persons having an interest in the property for the Act done by him. Based on the heirship certificate simpliciter, the heirship certificate holder cannot be said to have acquired any right, title or interest in the estate of the deceased.

13. The observations recorded in the above case indicate that the heirship certificate is issued barely for the purpose of formal recognition of the heirs of the property. It does not

create any right in favour of the person claiming to be a legal heir of the deceased in the property if any other person has an interest in the same property.

14. It also appears both Courts have erred in law in discarding her as a legal heir under the misconception that she had lost the title or interest in the immovable property survey No. 612 situated at Ambajogai. She may have lost interest or not, but her recognition should not be denied because she had no interest in the immovable property, and she kept mum for a long period of fifty years. It is a bare recognition from the Court to a person who is the legal heir of a person who has immovable property, and he wanted to assume the management or get a right to sue for the recovery of the property of the person deceased, that too in conformity with the law of usage applicable to the disposal of the said property.

15. After the application for the legal heirship certificate, the proclamation as provided under Section 2 of the said Act was published, and the objections were invited. In pursuance thereof, the objections were received. The Court, considering the application under the said provisions of law, was to summarily investigate the grounds of the objections on the one hand and of the right claimed on the other

by examining such witnesses or other evidence as may be adduced by the parties and then the Court may grant or refuse a certificate, as the circumstances of the case may require. The second proviso to Section 4 of the Act provides that if, from the evidence adduced, it appears that the question at issue between the parties is complicated or difficult, the Judge may suspend proceeding in the application for a certificate until the question has been tried by a regular suit instituted by one of the parties.

16. Herein, the Civil Court had considered the question as regards the title, and the High Court finally observed that the Municipal Council did not produce any title document i.e. the copy of the award. Hence, the matter has been remitted to the trial Court. In that suit, the Municipal Council itself had made the present applicant a party in interest in the suit property. The Civil Court has specifically held her as a legal heir. Hence, there was no complicated issue before the Court while considering the application. Be that as it may, the reasons before the Court, as mentioned above, appear to be not relevant to deny the certificate. Both Courts appear to have apparently erred in not granting the recognition to the applicant as a legal heir of the deceased Dost Mohammad Khan Nagad.

17. The Division Bench of this Court in the case of *Aloysius Manuel Dsouza and others Vs. Mary Kamala William Manuel Dsouza* (cited supra) has also clarified the effect of such an heirship certificate. Issue of such a certificate would definitely not create the right of the ownership, title or interest in any property against any person. It is always subject to the adjudication by the competent Court of law.

18. In the earlier suit between the applicant and the Municipal Council, the heirship of the applicant was not questioned. The Civil Court recorded the findings on the basis of evidence and held her legal heir of Dost Mohammad Khan Nagad. The High Court, in a Second appeal, remitted the matter to the trial Court. However, the High Court did not disturb the findings of holding her legal heirs of dost Mohammad Khan. The Court, barely remitted to the trial Court, granting the Municipal Council leave to produce the documents of award to prove its title over the property of Dost Mohammad Khan Nagad, which was claimed to be acquired by the Municipal Council. Hence, there is no force in the arguments of the learned counsel for the Municipal Council since the matter has been remitted to the trial Court, the findings on her legal heirship have also been set aside.

19. The earlier suit was between the same parties; a similar issue of legal heirship of the applicant was raised and decided in her favour. It

was not challenged in the appeal. It has attained the finality. Hence, the question framed is answered that the Court, under the jurisdiction of Bombay Regulation VIII of 1827, has no powers to deal with the same issue of the heirship of the applicant as it was dealt with by the competent Court of law.

20. For the above reasons, the following order is passed

ORDER

- (i) The Civil Revision Application is allowed.
- (ii) Both impugned judgments and orders are quashed and set aside.
- (iii) The trial Court is directed to issue legal heirship certificate as provided in Bombay Regulation VIII of 1827 in favour of the applicant as a legal heir of the deceased Dost Mohammad Khan Nagad.
- (iv) Rule made absolute in the above terms.
- (vii) No order as to costs.

(S. G. MEHARE)
JUDGE

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