

SGA

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 149 OF 2022

Smt. Deepali W/o Late Vijay Joshi
Age : 45 years, Occu : Household,
R/o Room No 104, Narayan Park,
Damodhar Vitawakar Marg,
Near Smashan Bhoomi, Vithawa,
Kalawa, Thane 400605

... Applicant

Versus

The Administrator, Jalgaon Road,
Cidco Office, Aurangabad.

... Respondent

....

Mr.P.C. Mayure - Advocate for applicant.

CORAM : GAURI GODSE, J.

DATE : 9th February, 2023

ORAL JUDGMENT :

1. This civil revision application is filed for challenging the judgment and order dated 7th November, 2022 passed by learned District Judge-3, Aurangabad in Regular Civil Appeal No.4 of 2022 and order dated 25th November, 2021 passed by learned 3rd Joint Civil Judge, Senior Division, Aurangabad below Exhibit-1 in Civil Miscellaneous Application No.508 of 2021. The applicant had filed Civil Miscellaneous Application No.508 of 2021 under section 254 of the Indian Succession Act, for issuance of letters of administration. The said application was

filed by the applicant, being sole heir and legal representative of deceased Vijay Yeshwantrao Joshi.

2. By order dated 14th December, 2022, notice for final disposal of this civil revision application was issued. As per office remark the respondent is served by court notice as well as private notice. However, none appears for the respondent. On 3rd February, 2023 also none appeared for the respondent. Hence, this civil revision application was directed to be listed today. Today also none appears for the respondent. Hence, civil revision application is taken up for final disposal.
3. It is the case of the applicant that Tenement No.N-11, 5th Scheme, H.No. A-36/3, situated at Sudarshan Nagar, Hudco, Aurangabad (“said property”) was allotted in the name of deceased Yeshwantrao Joshi. It is contended by the applicant that M.A.R.J.I. No. 31 of 2019 filed by her deceased husband Vijay as well as Vijay’s brother Ashok for issuance of letters of administration, being heir and legal representative of deceased Yeshwantrao was allowed on 16th March, 2019 and husband of applicant Vijay Yeshwantrao Joshi was granted letters of administration. The said letters of administration was granted in the name of Vijay Yeshwantrao Joshi, as the other heirs and

legal representatives of deceased Yeshwantrao had consented for the same. The heirs and legal representative of Yeshwantrao were three sons i.e. Vijay, Ashok, Santosh as well as daughter Rohini. Learned counsel for the applicant points out that all heirs and legal representatives of Yeshwantrao had consented for issuance of letters of administration in the name of deceased Vijay.

4. It is submitted that the husband of applicant i.e. Vijay Yeshwantrao Joshi expired on 31st July, 2019. The applicant being sole heir and legal representative of deceased Vijay, had filed Civil Miscellaneous Application No. 508 of 2021 for issuance of letter of administration in her name. By order dated 25th November, 2021, 3rd Joint Civil Judge, Senior Division, Aurangabad rejected the said application on the ground that name of deceased Vijay was not entered in the record of the said property. As per the record, the said property was still in the name of deceased Yeshwantrao Joshi. Hence, the learned Trial Judge held that no inheritable right is created in favour of applicant and hence, the application was rejected. Feeling aggrieved with the said order, the applicant preferred Regular Civil Appeal No.4 of 2022 in the District Court. The learned

District Judge has dismissed the appeal on the similar grounds. Hence, the present civil revision application is filed.

5. Learned counsel for the applicant submits that both the courts have failed to take into consideration that in the earlier application filed by deceased Vijay, heirs and legal representatives of deceased Yeshwantrao had consented for grant of letters of administration in the name of deceased Vijay. Even in the present application, applicant had complied with all procedures with respect to service of citations as well as publication of notice in the local news papers. Learned counsel for applicant points out that in fact the applicant had filed affidavit dated 27th August, 2021 in Civil Miscellaneous Application thereby explaining with respect to the details of compliances of objections that were raised. I have perused the affidavit. Affidavit specifically points out with respect to the no objection granted by heirs and legal representatives of deceased Yeshwantrao, which were filed in the application for issuance of letter of administration in the name of deceased Vijay. I have also perused all the supporting documents to the said affidavit, which shows that as per the objection that were raised, the applicant has also published notice in the local news paper and

all compliances have been done. In view of all the compliances being done with respect to the procedural aspects for grant of letter of administration, the applicant is entitled for getting letter of administration as prayed.

6. Reasons given by both the courts are with respect to recording findings on the legal rights of deceased Vijay as well as present applicant, which is not permissible in the proceedings for grant of letters of administration. The fact that a formal entry of the name of deceased Vijay was not entered in the property record, with respect to the said property cannot be a ground to reject the application filed by the present applicant.
7. It is not in dispute that original allotment was in the name of deceased Yeshwant. All the heirs and legal representatives of deceased Yeshwant had consented for grant of letters of administration in the name of deceased Vijay, he being the son of deceased Yeshwant. Accordingly letters of administration was granted in the name of deceased Vijay. The present applicant is widow of deceased Vijay. Record shows that except for the present applicant there are no heirs and legal representatives of deceased Vijay. In spite of service of citations as well as publication of notices in the local news paper, there were no

objections received from any party raising objection for grant of letter of administration in the name of applicant. Hence, I see no reason for not granting letters of administration in the name of present applicant as prayed. The reasons given by both the Courts for rejecting the application are not sustainable in the eyes of law. Record shows that all the compliances are made, hence present civil revision application needs to be allowed.

8. Hence, Civil Revision Application No. 149 of 2022 is allowed by passing the following order:

- (i) The impugned judgment and order dated 7th November, 2022 passed by learned District Judge-3, Aurangabad in Regular Civil Appeal No.4 of 2022 and order dated 25th November, 2021 passed by learned 3rd Joint Civil Judge, Senior Division, Aurangabad below Exhibit-1 in Civil Miscellaneous Application No.508 of 2021 are quashed and set aside and Civil Miscellaneous Application No.508 of 2021 is allowed.
- (ii) The Letters of administration shall be granted by the Trial Court in favour of present applicant in respect of Tenement No. A- 36/3, N-11, Fifth Scheme Sudarshan

Nagar, Hudco, Aurangabad, subject to payment of necessary court fee.

[GAURI GODSE, J.]