

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

WRIT PETITION NO. 15158 OF 2023

M/s. Mahalaxmi Constructions,
Through its Proprietor,
Dhananjay Sharadrao Tawar

...Petitioner

Versus

1. Suwarna Wd/o. Babasaheb Ghuge
2. Saanj D/o. Babasaheb Ghuge
3. Tejaansh S/o. Babasaheb Ghuge

Respondent no. 2 and 3 Minors
U/g of their mother respondent no. 1

4. Prayagbai W/o. Tatyrao Ghuge
5. The State of Maharashtra

...Respondents

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Advocate for Petitioner : Mr. Ganesh Gadhe h/f. Mr. P.M. Nagargoje
Advocate for Respondent Nos. 1 & 4 : Mr. C.V. Dharurkar
AGP for Respondent No. 5 : Mr. V.M. Chate

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CORAM : SHAILESH P. BRAHME, J.

DATE : 12th DECEMBER, 2023

ORDER :

1. Heard both the sides finally at the admission stage.
2. The petitioner is challenging order dated 02.12.2023, below Exhibit 14 in Civil M.A. No. 580 of 2020, passed by learned 6th Joint Civil Judge Senior Division, Aurangabad. Respondent no. 1 is the widow of deceased Babasaheb Tatyrao Ghuge. Respondent nos. 2 and 3 are

their daughters. The respondent no. 4 is the mother of deceased Babasaheb.

3. Babasaheb was owner of three vehicles and other movable and immovable properties. After his death, respondent nos. 1 to 4 have filed MARJI No. 580 of 2023 for getting Succession Certificate before Civil Judge Senior Division, Aurangabad. The proceedings are pending. The petitioner is not party to the proceedings referred above, filed application Exhibit 14 raising objection to the claim of Succession Certificate. It sought prayer of extending opportunity of hearing and deciding the proceedings after converting them in the Civil Suit. It contended that three vehicles were transferred to it. The vehicles were seized by the Police because offence was registered as deceased Babasaheb had committed suicide.

4. It is further contended that there were financial transactions between deceased Babasaheb and the petitioner. Documents are available to indicate transfer of vehicles. The petitioner applied for the custody of vehicles to the Court. Trial Court granted custody but it was reversed in Revisional Court. The petitioner is prosecuting matter in the High Court and there is interim order. It is contended that the respondents are not entitled to Succession Certificate to the extent of vehicles.

5. Respondent nos. 1 to 4 contested application Exhibit 14. According to them, Succession Certificate is sought on the basis of

undisputed relationship with the deceased. The objections of the petitioners are contended to be unsustainable. There are *mala fides* for opposing the claim of the respondents.

6. Learned counsel for the petitioner submits that the respondents have not denied the previous custody of the petitioner when vehicles were seized, the amount outstanding against deceased Babasaheb and the insurance papers of the vehicles. Learned counsel submits that this shows the entitlement of the petitioner. As per Section 373 (3) of Indian Succession Act, the petitioner has better, *prima facie*, claim. He has relied upon the orders passed by criminal courts under Section 457 of Code of Criminal Procedure.

7. He would submit that if the Succession Certificate is issued to the respondents, irreparable loss would be caused. The certificate is conclusive as per Section 381 of Indian Succession Act. When objections are invited, the petitioner raised objection legitimately by application Exhibit 14. Considering the rival claims, learned counsel submits that the proceedings should have been converted into regular civil suit.

8. Learned counsel for the petitioner submits that the judgment cited by the petitioner and the written submissions have not been considered by the learned Judge. Impugned order is perverse and unsustainable.

9. Per contra, learned counsel for the respondent nos. 1 to 4 opposed the submissions. According to him, reliance on Section 295 of Indian Succession Act, is not applicable to Succession Certificates. The Succession certificate does not confer title. For asserting independent right, the petitioner can file independent proceeding which is not prohibited under Section 387 of Indian Succession Act. It is further contended that the deceased was rightful owner of the vehicles. The proceedings for custody of the vehicle are pending in the High Court and have not attained finality. Therefore, petitioner can have no *prima facie* right, title or interest in the vehicles.

10. Learned counsel seeks reliance upon following judgments :

- i. *Smt. Ningamma and others Versus Smt. Saamma and others*, **AIR 2001 Karnataka 339** ;
- ii. *Madhvi Amma Bhawani Amma and others Versus Kunjikutty Pillai Meenakshi Pillai and others*, **AIR 2000 Supreme Court 2301** ;
- iii. *C.K. Prahalada and others Versus State of Karnataka and others*, **(2008) 15 SCC 577** ;
- iv. *Sheikh Mohammad Amin and another Versus Yasir Farooq and others*, **passed by High Court of Jammu & Kashmir and Ladakh at Srinagar in RFA No. 57 of 2022.**

11. I have considered rival submissions of the parties. The petitioner's claim is founded on some transactions with deceased Babasaheb without therebeing any documents transferring the vehicles. The petitioner or its proprietor is not related to the respondents private parties. On the basis of some ledger account, documents of insurance, payment of money to the drivers and seizure of the vehicles from the custody of the petitioner, objections are lodged against the respondents.

12. The proceedings for Succession Certificate are summary in nature. It cannot be converted into suit by referring to Section 295 of Indian Succession Act. This is settled in *Smt. Ningamma* (supra) paragraph nos. 26 and 27.

13. In the matter of *Madhavi Amma Bhawani Amma* (supra), Supreme Court held that in decision under Section 372 of Indian Succession Act, would not preclude a party from filing subsequent proceeding or suit. Section 387 of Indian Succession Act, is an enabling provision to file a suit and to raise the question. Paragraph nos. 13 to 19 are relevant.

14. It is made clear in case of *C.K. Prahalada* (supra) that Succession Certificate is for limited purpose and the Court granting Succession Certificate does not decide question of title. The proceedings are summary in nature.

15. Learned counsel for the respondent has rightly referred to above referred judgments to demonstrate the scope of enquiry for issuing Succession Certificate which the petitioner is trying to enlarge or transgress. The petitioner has an independent remedy to file suit claiming title and interest over the vehicles in question. In the proceedings initiated by the respondents it cannot assert the title Section 381 nor 387 of Indian Succession Act, do not preclude it from filing suit. The submissions of learned counsel for the petitioner referring to Section 387 and 373 (3) of Indian Succession Act, are meritless.

16. The submission of the petitioner that the proceedings be converted into Civil Suit is fallacious. Section 295 cannot be made applicable for proceedings under Chapter X of Indian Succession Act. I propose to agree with the view taken by Karnataka High Court.

17. The submission that Succession Certificate be issued considering better, *prima facie*, case has also no merit. Just because vehicles are seized from custody of the petitioner and it is the petitioner who sought custody under Section 457 of Code of Criminal Procedure, cannot make the claim of the petitioner better. The respondents are close relatives, undisputedly. They stand on the better footing than the petitioner.

18. The findings recorded by learned Judge are sound and based upon legal provisions. Learned Judge has taken into account all the

aspect in the matter specially statutory provisions. I do not find any fault in the impugned order.

19. Though application Exhibit 14 has a tenor of objection, its prayer 'B' is in the form of relief. The said relief has no sanctity of law. Learned Judge is justified in rejecting application Exhibit 14. The petition is devoid of substance. Writ Petition is dismissed.

[SHAILESH P. BRAHME, J.]