

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.852 OF 2022

Harilal Ravaji Patel

...Petitioner

Versus

Sunanda Sambhaji Hawaldar & Anr.

...Respondents

Mr. Bhushan Walimbe for the Petitioner.

Mr. Chetan G. Patil for the Respondent Nos. 1 & 2.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : AUGUST 3, 2023

P. C. :

1. The Petition questions the order dated 6th January, 2021 passed by the District Judge in Misc. Appeal No. 35 of 2020 allowing the Appeal and directing heirship certificate to be issued to the Appellant who is the Respondent No. 1 herein.

2. Learned counsel appearing for the Respondents raises a preliminary objection to the maintainability of the Writ Petition at the instance of the Petitioner. He draw support from the decision of this Court in the case of *Group Grampanchayat Sasavane vs Sunanda Shamrao Bandishti & Ors.* [2011(2) Mh.L.J., 424]

3. Learned counsel appearing for the Petitioner submits that the heirship certificate was sought by the Respondent No. 1 as the legal heir of one Sambhaji Hawaldar under the provisions of Bombay Regulation Act. He would further submit that the Application has been moved for the purpose of entering the name of the Applicant in the property cards in respect of City Survey No. 277 and Gat No. 9/1, 9/3, 10/1/C. He would submit that it is in respect of the suit property 10/1/C that the Petitioner is aggrieved by issuance of the heirship certificate as 8.5R land out of the said Gat number was purchased by the Petitioner from the husband of the Respondent No. 1 and his brother Bhimrao vide registered sale deed dated 21st October, 1997. He would further submit that legal notice was issued on 7th June, 2019 on behalf of Respondent No. 2 raising objection to the sale deed on the ground that the said Sambhaji Hawaldar was not traceable since 1980. He would further contend that in 2019 the Petitioner filed a suit seeking injunction against the Respondent in which the temporary injunction application amongst other grounds was rejected in view of grant of heirship certificate. He would contend that as such, he has entitled to maintain an action challenging the heirship certificate as his rights in the property are being affected by the heirship certificate.

4. Considered the submissions.

5. The application has been filed under the provisions of Bombay Regulation Act and the only relief which has been claimed is that heirship certificate be issued to the Respondent No. 1. The heirship certificate was sought as Sambhaji Hawaldar was unheard for the period of 35 year. By the impugned order dated 6th January, 2021 the Appellate Court issued the heirship certificate to the Respondent No. 1 by holding that there is no necessity for declaration of the death of Sambhaji Hawaldar in view of the presumption under section 107 and 108 of the Evidence Act.

6. The decision of this court in the case of ***Group Grampanchayat Sasavane*** cited (supra) holds that the grant of a heirship certificate would not affect in any way the right title and interest if there be any of the Petitioners therein in any of the properties of the deceased Radhabai. The decision was rendered in the facts of that case where Petitioner who was Group Grampanchayat claimed that the deceased Radhabai was not owner of the property but the Petitioner was the owner. While deciding the maintainability of the Petition, this Court held that as the Petitioner does not claim to be heir of Radhabai, the present Petitioner would not be a person aggrieved by any order of grant or refusal of grant of heirship certificate. The provisions of the Bombay Regulation Act which provided for grant of heirship certificate were considered by this Court.

7. Considering the provision of the Bombay Regulation Act, the grant

of heirship certificate is only a formal recognition of the heir for the purpose of management of the property left behind by the deceased. In my opinion, the grant of the heirship of the certificate does not confer any right on the person in whose favour the same is granted. In the present case, the Petitioner had already filed suit seeking perpetual injunction and considering the provisions of the Bombay Regulation Act, the mere issuance of the heirship certificate will not be construed as a finding of ownership in respect of the property, which will be decided independently in the proceedings, if any, instituted by the Petitioner.

8. In view of the findings above, there is no need to interfere with the order of issuance of heirship certificate. The Writ Petition stand disposed of in the above terms.

(SHARMLA U. DESHMUKH, J.)