

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11708 OF 2013

Vasudeo Vinayak bhatkhande & Ors. ...Petitioners.

Versus

Sudha Yeshwant Bhatkhande & Anr. ..Respondents.

Mr. R.D. Soni and Mr. Sujay Gawade i/b M/s Shree & Co. for the petitioner.
None for the respondents.

Coram : Sharmila U. Deshmukh, J.

Date : August 7, 2023.

P. C. :

1. Heard.
2. The matter was on board on 3rd August 2023 and as none appeared on behalf of the respondents, it was listed today. It was also noted in the last order that on previous occasion too none appeared on behalf of respondent no.2. Today also none appears for respondent no.2
3. Considering the limited controversy involved in the present petition, the petition is taken up for hearing. The matter was kept back and has been taken up on second call.
4. The challenge in the petition is to the order dated 22nd July

2013 allowing the application of third party applicant to be joined as party to the petition which has been filed under the provisions of Bombay Regulation VIII of 1827. The application for grant of heirship certificate being M.A. No.321 of 2012 was filed by the sons and daughters of deceased Vinayak Trimbak Bhatkhande seeking heirship certificate in respect of the properties of deceased as mentioned in the schedule thereto. An application came to be filed in these proceedings to be impleaded on the ground that the property in respect of which the heirship certificate is sought, is the ancestral property and that in respect of the said property, the third party applicant's mother Vimal Madhusudan Bhatkhande had been issued heirship certificate. The trial Court while deciding the application held that the documents filed by the parties show that the proposed applicant is a legal heir and joint family member of the petitioner and, thus, has a right in the acquired property as well as the compensation which needs to be decided.

5. Mr. R. D. Soni, learned counsel appearing for the petitioner submits that the applicants are Class-I heirs of deceased Vinayak Trimbak Bhatkhande and admittedly Sanjay who is son of the cousin brother of deceased Vinayak does not fall in Class-I heir. He would further submit that in the application seeking issuance of heirship

certificate, third party applicant is not required to be joined. He would further submit that the trial Court has factually erred in holding the third party applicant is the legal heir. He draws support from the decision of this Court in the case of ***Aloysius M. D'souza v. Mary K. W. M. D'souza [2006(6) Bom.C.R.56]***.

6. Considered the submissions and perused the papers.

7. The application has been filed under the provisions of Bombay Regulation VIII of 1827. In that context, it will be beneficial to reproduce the provisions of Regulation Nos. 7 and 8 of the Bombay Regulation VIII of 1827, which reads thus :

"7. First.—An heir, executor or administrator, holding the proper certificate, may do all acts and grant all deeds competent to a legal heir, executor or administrator, and may sue and obtain judgment in any Court in that capacity.

Second.—But, as the certificate confers no right to the property, but only indicates the person who, for the time being, is in the legal management thereof, the granting of such certificate shall not finally determine nor injure the rights of any person; and the certificate shall be annulled by the Zilla Court, upon proof that another person has a preferabel right.

Third.—An heir, executor or administrator, holding a certificate, shall be accountable for his acts done in that capacity to all persons having an interest in the property, in the same manner as if no certificate had been granted."

"8. The refusal of a certificate by the Judge shall not finally determine the rights of the persons whose application is refused, but it shall still be competent to him to institute a suit for the purpose of establishing his claim."

8. A plain reading of above provisions will indicate that the issuance of heirship certificate does not confer any right in the property, but only indicates the person who, for the time being, is in the legal management thereof, and the granting of such certificate does not finally determine nor injure the rights of any person.

9. Considering the provisions above, it is clear that issuance of heirship certificate is only a formal recognition of the party as the heir of deceased and the party in whom the legal management of the property vests till the rights are finally decided by the competent civil Court. In the present case, admittedly, Sanjay, i.e., the third party applicant, is not a Class-I heir of deceased Vinayak Trimbak Bhatkhande although the application for issuance of heirship certificate refers to the property of deceased. Considering the provisions of Regulation 7 and Regulation 8 of Bombay Regulation VIII of 1827, it is clear that by issuance of heirship certificate, no right in the property is conferred. The right, if any, to the property is required to be determined by the civil Court.

10. The decision of this Court in ***Aloysius M. D'souza (supra)*** is clearly applicable to the present case, in which this Court in paragraph 9 and 10 has held thus :

“9. The grant of heirship certificate does not establish the right of such party in the property of the deceased by itself. In this view of the matter, the rights of the appellants, if any, in the property of the deceased are not taken away by grant of heirship certificate to the respondent No.1. On the other hand, Clause 7 further makes it clear that such heirship certificate holder is accountable to all persons having an interest in the property for the acts so done by him or her.

10. In the backdrop of the aforesaid legal position, it needs no emphasis that based on the heirship certificate simplicitor, the respondent No. 1 cannot be said to have acquired any right or title in the estate of the deceased.

11. Considering the provisions of Bombay Regulation VIII of 1827 and the law laid down by the this Court in the case of ***Aloysius M. D’souza (supra)*** the impugned order cannot be sustained and the same is hereby quashed and set aside. The petition stands allowed.

[Sharmila U. Deshmukh, J.]