

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.593 OF 2023

Nikita Nitin Gawankar & Anr.

... Applicants

V/s.

Kishor Tukaram Gavankar & Ors.

... Respondents

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Mr. Nikhilesh Pote with Mr. Manan Talati for the
applicants.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 18, 2023

PC.:

1. By the impugned order, the Trial Court has recalled its order dated 7th March 2020 in a proceeding initiated under the provisions of the Bombay Regulation Act VIII of 1827.

2. The respondents herein filed Miscellaneous Civil Application No.9 of 2015, which was subsequently converted into Civil Miscellaneous Application No.72 of 2016 seeking a declaration that they be declared as legal representatives of the deceased Tukaram Shankar Gawankar. According to the applicant, relief in relation to the properties described in paragraph 1 of the plaint is sought.

3. The Trial Court, by order dated 7th March 2020, considering objections of the opponent passed an order that till the applicants get their rights adjudicated in appropriate proceedings, the proceedings under Regulation Act needs to be stayed.

4. Without approaching the competent Court by way of substantive suit, the applicants filed an application for recall of order dated 9th March 2023. By the impugned order the Trial Court has recalled the order.
5. Learned advocate for the applicant submitted that the property in question was self-acquired property of the applicants. Therefore, any certificate granted under Regulation Act affect substantive rights of the applicant.
6. In my opinion, the apprehension expressed is misplaced. The declaration granted under the provisions of the Bombay Regulation Act is restricted to the factum of applicants being legal representatives of the deceased. Whether deceased acquired title over the property or the nature of title of deceased is not and cannot be subject matter of adjudication before the Court under the provisions of the Bombay Regulation Act. Moreover, the proceedings under Regulation Act are summary in nature. Any finding recorded in such proceeding shall not res judicata findings in the substantive suit where issues in relation to the title of the property is framed. Therefore, in limited power conferred under the provisions of Regulation Act to the extent of declaration that the applicants are legal representatives of the deceased, therefore, substantive rights of the applicants over the property are not affected. Hence there is no legal infirmity in the order.
7. The revision application is dismissed. No costs.

(AMIT BORKAR, J.)