



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

APPEAL FROM ORDER NO.71 OF 2022

- 1) Ranjana w/o. Sanjaykumar Landge,
Age : 46 Years, Occupation:
Household.
- 2) Sidhant s/o. Sanjaykumar Landge,
Age: 22 Years, Occupation: Education.
Both R/o.: Priya Nagar, Parli-Vaijnath,
Taluka: Parli-Vaijnath, District: Beed.

.... Appellant(s)
(Original Petitioners)

// VERSUS //

- 1) Sunita Sanjaykumar Landge,
Age: 46 Years, Occupation: Service.
- 2) Dhanashri s/o. Sanjaykumar Landge,
Age: 17 Years, Occupation: Education.
Both R/o.: Venkatesh Nagar, Near Sant
Janabai College, Kodri Road,
Gangakhed, Taluka: Gangakhed,
District : Parbhani. A/P :- Ring Road,
Latur, Tq & Dist. Latur.
Through Natural Guardian, Mother
Smt. Sunita Sanjaykumar Landge.

.. .. Respondent(s)
(Original Objection Petitioners)

Mr. Ganesh V. Mohekar, Advocate for the appellants
Mr. P.P. More, Advocate for the respondents

CORAM : SANDIPKUMAR C. MORE, J.

DATE OF RESERVING THE JUDGMENT : 25.09.2024.
DATE OF PRONOUNCING THE JUDGMENT : 26.11.2024

JUDGMENT :

1. The present appellants/original petitioners, by way of this appeal, have challenged the judgment dated 15.07.2022 in Misc. Civil Application (MCA) No.381 of 2020 passed by the Civil Judge Senior Division, Ambajogai, District Beed, whereby their application is returned under Order VII Rule 10 of Code of Civil Procedure (CPC) for filing it to the Court having proper jurisdiction.

2. The background facts are as under:

The appellants have filed MCA No.381 of 2020 on 11.10.2019 in the Court of Civil Judge Junior Division, Parli-Vajnath for getting Heirship Certificate in respect of the deceased Sanjaykumar Dattatray Landge under Section VIII of the Bombay Regulation Act, 1827, being the legal heirs. The present respondents/original objection petitioners, in response to the paper publication, appeared in the said application and raised the contention by opposing the claim of the present appellants. Since

the application was contested, the proceedings were transferred to the Court of Civil Judge Senior Division, Ambajogai.

3. The learned Civil Judge Senior Division i.e. the learned trial Court, by conducting the trial, after adducing evidence by the parties, returned the proceedings for filing it to the Court of proper jurisdiction as mentioned above. Hence, this appeal.

4. The learned counsel for the appellants submits that the learned trial Court has definitely erred in returning the application under Order VII Rule 10 of the CPC, even after recording the evidence on all the issues. He pointed out that though the learned trial Court framed four issues, but wrongly preferred to decide the application only on the issue of territorial jurisdiction. He pointed out that the learned trial Court had even failed to follow the procedure under Order VII Rule 10-A of the CPC and merely returned the application without direction to the appellants to file the application in particular Court of jurisdiction.

5. On the contrary, the learned counsel for the respondents/objection-petitioners, strongly resisted the submissions

made on behalf of the appellants. According to him, the appellants could not file any satisfactory evidence on record that the deceased Sanjaykumar resided at Parli-Vaijnath at any point of time. He pointed out that the respondents have also filed a fresh application under Section VIII of the Bombay Regulation Act, 1827 for getting Heirship Certificate at Latur, wherein the present appellants have already appeared and raised the objection that it is barred by the principle of *res judicata*.

6. Heard the rival submissions and also perused the documents on record along with the impugned judgment.

7. On perusal of the impugned judgment, it appears that the appellants have claimed Heirship Certificate, being legal heirs of the deceased Sanjaykumar, mainly on the ground that the deceased Sanjaykumar was permanent resident of Parli-Vaijnath. However, the documentary evidence filed on record clearly indicates that the deceased Sanjaykumar never resided at Parli-Vaijnath. They had relied upon one certificate issued by the Chief Officer, Parli, wherein the deceased Sanjaykumar was shown to be resident of

village Parli. However, it is extremely important to note that Sanjaykumar passed away on 11.09.2019 and the said certificate was issued by the Chief Officer Parli on 14.06.2022 at the request of Sanjaykumar, who was already dead by that time. As such, the said certificate appears to be fabricated *prima facie* and therefore, cannot be relied upon.

8. On the contrary, the other documents on record indicate that the deceased Sanjaykumar was lastly posted at Gangakhed and at the time of marriage he was permanent resident of Manik Nagar Taluka : Humnabad, District : Bidar in the State of Karnataka. Moreover, in the document in respect of the litigation, whereby the marriage between the appellant No.1 and the deceased Sanjaykumar was dissolved, Sanjaykumar was shown to be resident at Latur. Thus, not a single reliable document is there on record to show that the deceased Sanjaykumar had resided at Parli at any point of time.

9. On the contrary, the maintenance litigation filed by the appellants itself reflects the address of deceased Sanjaykumar at Gangakhed.

10. The learned counsel for the appellants strongly submitted that the learned trial Court did not follow the procedure under Order VII Rule 10-A of CPC. According to which, it was under obligation, to specify the Court to the appellants, in which they should present their application. Though in the operative part, such Court is not specified, but indirectly the learned trial Court, by observing that Sanjaykumar was serving at Gangakhed lastly, suggested that the application should be filed at Gangakhed. Further Order XIV Rule 2 of the CPC clearly indicates that the Civil Court, after framing issues, can take up any of those issues for consideration ahead of other issues, if it is related to the jurisdiction of the Court. Thus, the suggestion of the learned trial Court that the application should be filed at Gangakhed is not perverse at all, since it is in view of the observation of Patna High Court in the case

of *Sonadevi Vs. The Estate of late Ajay Kumar*, AIR 2010 PATNA 108.

11. It is also significant to note that now the respondents have filed another application for same purpose i.e. for issuance of Heirship Certificate at Latur, wherein the appellants have already appeared and taken objection in view of the principle of *res judicata*. However, it is to be decided by the concerned Court at Latur by considering as to whether the present application was decided on merit. Moreover, the present respondents, in the application at Latur, have claimed that the deceased was permanent resident of Latur. Thus, as per the observation in the case of *Sonadevi Vs. The Estate of late Ajay Kumar* (supra), the application for issuance of Heirship Certificate can be filed at the place where the deceased was lastly posted or at the place where he was permanent resident. Be that as it may, but the objection under the principle of *res judicata* is to be decided by the concerned Court at Latur, independently, and on its own merit.

12. At present, the impugned order passed by the learned trial Court appears to be proper in given circumstances, since the appellants could not establish the fact that the deceased Sanjaykumar was permanent resident of Parli. Thus, no interference is required in the impugned judgment and accordingly, the present Appeal from Order stands **dismissed and disposed** of.

(SANDIPKUMAR C. MORE, J)