

Vinaa Khadpe
(P.S.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14031 OF 2022

Arun Popat Attole and ors

.. Petitioners

Versus

Ganpat Dhondiba Madane (Ramoshi)

.. Respondents

-
- Mr. Abhishek Nagode for the Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 11, 2024

P.C.:

- 1.** Not on Board. Mentioned. Taken on Board.
- 2.** Writ Petition has been mentioned today for urgent relief and hearing.
- 3.** Order under challenge is passed on 5 September 2019. Writ Petition appears to be verified on 9 October 2019 but bears no.14031 of 2022. It challenges the order dated 5 September 2019 passed below Exh. 1 by the District Judge, Baramati, Pune in Civil Misc. Appln. No.12 of 2019. Application below Exh.1 was filed for condonation of delay of 141 days to file the Appeal. Learned Appellate Court has given reasons that the Appellants i.e. Petitioners before me had failed to explain to the satisfaction of the Court reasons for the delay. However, there is one more issue that strikes the mind which needs to be delineated and decided right away. Appeal has been filed against the order granting legal heirship certificate in respect of certain properties of the deceased to his legal heirs. Contention of the

Petitioners for maintaining the Appeal is that on the basis of legal heirship certificate the legal heirs of the deceased can sell one of the property which was purchased by the Petitioners from the deceased. If the Petitioners have purchased any particular property, it shall be open to the Petitioners to file an appropriate Civil Suit in the Civil Court having original jurisdiction to protect their right, title and interest in any such property on the strength of their transaction. I am told that Petitioners have already instituted a civil Suit against the legal heirs of the deceased. It is a clear and settled position in law that grant of legal heirship certificate does not determine or transfer any right, title and interest in any immovable property to the legal heirs regarding property belonging to the deceased. All that it determines is that the Applicants are declared as the legal heirs of the deceased and nothing more than that. Mere grant of legal heirship certificate does not determine transfer of title of the deceased in the immovable property of the deceased to the legal heirs. Grant of heirship certificate does not establish the right of such party in the property of the deceased by itself. The rights, if any, of a person claiming ownership in the property of the deceased are not taken away by granting an heirship certificate to an heir. In that regard the decision of the Division Bench of this Court in the case of *Aloysius Manuel D'souza and ors vs. Mary Kamala William Manuel D'souza and ors*¹ and followed by the

¹ 2006 SCC Online Bom 821 : (2006) 6 Bom CR 56

decision of the Single Bench of this Court in the case of *Yusuf Unissa Begum through her General Power of attorney holder Ravindrakumar Munnalal Pardeshi vs. Municipal Council, through Sudhakar and anr* ²

covers the aforesaid proposition and settles the legal position.

Paragraph No.8 to 10 of the decision of the Division Bench (supra) are reproduced below for immediate reference :-

8. 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.
9. 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. The respondent No.1 has filed an affidavit dated 19.8.2006 before us stating therein that she has been residing at flat No.2-C, 2nd floor, IL Palazzo Co-operative Housing Society Ltd., Little Gibbs Road, Malabar Hill, Mumbai, and that she has not created any third party rights in respect of the said flat. She has further undertaken that for a period upto 18.11.2006, she will not apply to IL Palazzo Co-operative Housing Society Ltd. for transfer of Share Certificate in her name in respect of the said flat on the basis of the legal heirship certificate. An affidavit has also been filed by the Constituted Attorney of the respondent No.1 on 19.8.2006 stating therein that he has not created any third party rights in respect of the said flat and that no application shall be made by him to the society for transfer of the Share Certificate in the name of respondent No.1 in respect of the said flat upto 18.11.2006 and that until that date, as a Constituted Attorney, he shall not sell, transfer, mortgage, alienate or create any third party rights in respect of the said flat.
10. We are, thus, of the view that the appellants need to prosecute their remedy for determination of their rights in the estate/properties of the said deceased by pursuing appropriate legal remedy. In the circumstances and the legal position noticed above, we do not deem it necessary to grant leave to the appellants to challenge the order of heirship certificate granted in favour of the respondent No.1 even if we assume that the delay in filing the appeal is sufficiently explained. The appellants as well as the respondent No.1 have an adequate remedy of establishing their rights in the estate of the deceased in the appropriate proceedings. The appeal as well as the Notice of Motion are disposed of accordingly.

4. In view of the above, I am not only inclined to dismiss the Writ Petition but also the Civil Misc. Application which is filed by the Petitioners to challenge the heirship Certificate and uphold the impugned order dated 5 September 2021.

5. Mr. Nagote, learned Advocate appearing for the Petitioners has fairly informed the Court that Suit for perpetual injunction has already been filed by the Petitioners in the year 2019 itself and is being prosecuted separately. Hence, the Appeal itself is not maintainable. The Civil. Misc. Application proceedings No.12 of 2019 filed by the Petitioners stands dismissed. Petitioners shall therefore consider to prosecute the said Suit for perpetual injunction in accordance with law, if so desired.

6. With the above directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

Vinaa Khadpe

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signed by
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