



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

940 WRIT PETITION NO. 8406 OF 2024

SAMBHAJI SITARAM JAWALE
VERSUS
DASHRATH BHAGWAN ZADE

Mr. S. S. Rathi, Advocate for the petitioner
Mr. V. S. Kadam, Advocate for the respondent

CORAM : R. M. JOSHI, J.
DATE : 27th FEBRUARY, 2025

PER COURT :-

1. This petition takes exception to the order dated 27th March, 2024 passed by 3rd Jt. Civil Judge (J.D.), Parbhani in Civil M.A. No. 193/2023. The operative order of the said order reads thus:

"1. The application (Exh. 21) is allowed.

2. The original applicant is directed to implead present objector as opponent.

3. The RCS No. 319/2023 is pending before Hon'ble Jt. Civil Judge, Sr. Division, Parbhani (Hon'ble Shri. A. B. Shendge) among same parties in respect of immovable property. Hence, issue letter to Hon'ble Principle District & Sessions Court, Parbhani for transfer of this case being contested application claiming "Heirship Certificate".

2. There is no dispute about the fact that the petitioner filed Misc. Civil Application No. 193/2023 under the provisions of Bombay Regulation Act, 1827 for seeking heirship certificate in respect of

deceased Narayan Shravan Jawale, but the heirship certificate is not sought in respect of any particular property. In the light of this fact, an application came to be moved by the respondent contending that there are other disputes pending between the parties wherein the issue of the heirship of deceased Narayan is raised and hence impleadment is sought. The respondent however does not claim heirship of deceased Narayan.

3. The learned Trial Court thought it fit to permit the impleadment of the objector/respondent as opponent in the said proceeding. A further request was made to the Principal District Judge for transfer of case being contested application.

4. Learned counsel for the petitioner submits that the Trial Court has committed error in not considering the scope of Article 305 of Civil Manual which deals with the application for grant of heirship certificate. It is his contention that only in case the person contest the said application claiming to be heir of the deceased, such objection could be considered and not otherwise. According to him since the grant of heirship does not determine rights of persons, it was not open for the Trial Court to enlarge scope of the application, as if the same is for determination of rights of parties.

5. Learned counsel for the respondent supported the impugned order essentially drawing attention of the Court to other proceedings pending between the parties wherein objection is raised about the right of petitioner herein. However, he does not dispute that the respondent does not claim to be heir of deceased Narayan.

6. A grant of heirship certificate is only a formal recognition of his existing status as an heir. This does not bestow status of an heir upon a person, as such recognition is limited for the management of property of deceased. As rightly pointed out by the learned counsel for the petitioner that the rights of the parties would not be determined in the proceeding in question. Herein this case, application is filed under Section 2 of the Act for seeking of heirship certificate. Pertinently no heirship certificate is sought in respect of any particular property. In such circumstances except for the person who claims to be the heir of deceased, no other person could be allowed to raise objection in order to make this application as a contested application. Having regard to the scheme of Bombay Regulation Act and the purpose of issuance of heirship certificate for the primary purpose of management of the properties of deceased, such contest by person not interested in seeking heirship is not permissible.

7. Learned Trial Court seems to have been impressed by the

fact that there are other disputes pending between the parties. The Court, however, has ignored that issuance of heirship certificate would not lead to determination of the rights of the parties and it is for the Civil Court to decide the same in appropriate proceeding. The Court has also ignored the fact that the respondent is not claiming to be heir of deceased Narayan as such he could not have contested the said application. As a result of above discussion, the order impugned cannot sustain. Hence, petition is allowed. Impugned order is set aside. Application Exhibit 21 stands dismissed.

(R. M. JOSHI, J.)

ssp