

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 785 OF 2022

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| 1. Sambhaji Vithoba Hatkar |] | |
| Age : 44 years, Occ : Agriculturist, |] | |
| 2. Ashok Vithoba Hatkar |] | |
| Age : 42 years, Occ : Agriculturist, |] | |
| Both residing at Kousari, Taluka Jath, |] | |
| District : Sangli |] | <u>...Appellants</u> |

Versus

- | | | |
|------------------------------------|---|-----------------------------|
| Sakhubai Laxman Bhusnar |] | |
| Age : 57 years, Occ : Household, |] | |
| Residing at Diksal, Taluka Sangola |] | |
| District : Solapur |] | <u>...Respondent</u> |

Mr. Kuldeep U. Nikam for the Appellant.
None for Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : 26th March, 2025.

Oral Judgment :

1. The First Appeal has been preferred challenging the judgment dated 5th October, 2015 passed by the Joint Civil Judge, Senior Division, Sangli issuing the Probate in the name of sole Respondent under Section 276 of the Indian Succession Act, 1925.
2. The Respondent herein is the daughter of one Bhimabai Vithoba Patil who expired on 10th November, 2014. It was stated in the

Application for Probate that Bhimabai had executed Will on 5th November, 2014 bequeathing her ½ share of Gat No. 648 of village Kosari, Tal. Jath, District – Sangli to the sole Respondent who was her daughter. The application for probate was filed without impleading the present Appellants who are the sons of Vithoba Patil (Hatkar). Bhimabai claimed to be wife of Vithoba Patil and in the Will mentioned that her husband had allotted the property towards her maintenance and as per Section 14 of Hindu Succession Act, 1956, she was the absolute owner of the property and bequeathed the same. Upon the Will being duly proved, the Trial Court issued Probate in the name of Respondent, however, no citation was served upon the present Appellants and there was no Respondent in the said Civil Miscellaneous Application. After acquiring knowledge about the same, Appeal came to be preferred before the District Judge, which was returned for presentation to this Court in view of decision in the case of ***Smt. Nola Jonathan Ranbhise vs. Union of India***¹.

3. Office noting indicates that the sole Respondent has been duly served. However, none appears for Respondent.

4. Mr. Nikam, learned counsel appearing for Appellants would submit that the property bequeathed by the Will of Bhimabai was their ancestral property and without being served with any citation though

1 2014 (4) ALL MR 181.

having interest in the property, the Probate could not have been granted. He would further submit that the Apex Court in the case of ***Manibhai Amaidas Patel vs. Dayabhai Amaidas***², the Apex Court has held that it is necessary to cite parties who would otherwise have interest in the succession to the estate of the deceased which would naturally include all the heirs of the deceased. He would submit that the Apex Court in that case also observed that grant was not opposed as none was made party and held that grant was obtained by concealing from the Court something which is very material to the case and the Appellants therein were entitled to be heard. He submits that similarly, in the case of ***Ajit Ramchandra Yadav vs. Daulat Shivaji Yadav***³ Co-ordinate Bench of this Court followed the decision in the case of ***Manibhai Amaidas Patel*** (supra) and held that Appellants were proper party to the Probate proceedings and merely issuance of public notice is not sufficient to infer knowledge about the pendency of the Probate proceedings. He would therefore submit that without issuing any citation to the Appellants who had an interest in the property, the Probate could not have been granted.

5. The issue which arises for consideration is whether the Probate could have been granted to the sole Respondent without impleading the present Appellant as party to the proceedings.

2 (2005) 12 SCC 154.

3 First Appeal No. 400 of 2018, dtd. 30th August, 2021.

6. Perusal of the impugned judgment would indicate that the sole Respondent claimed to be daughter of Bhimabai Vithoba Patil and Vithoba Patil is the father of present Appellants. The sole Respondent would be step-sister of present Appellants. The property which has been bequeathed by the Will to the sole Respondent has been stated in the Will to have been allotted by Vithoba Patil towards maintenance of Bhimabai. Considering that the property was allotted by Vithoba, the Appellants who are sons of Vithoba would have an interest in the said property, particularly if the property was ancestral property. That being so, the Probate Application could not have been filed without impleading the present Appellant particularly, when the Will specifically makes a mention that the property has been allotted to Vithoba. Under Section 283, the District Judge is empowered to issue citations calling all persons claiming to have any interest in estate of deceased.

7. In the present probate Application, the sole Respondent did not implead the Appellants as party and therefore, there was no opposition to the grant of probate. The Apex Court in the case of ***Manibhai Amaidas Patel*** (supra) had held that non-impleadment of the party having interest in the estate of the deceased suffers from gross lacuna in Paragraph 8 to 10 of the said judgment, which reads as under :

"8. The appellants have raised several contentions in support of their appeal before us all of which are not necessary to be noted. We are satisfied that the appeal must be allowed in view of the contention, namely, that both the courts have wrongly failed to notice that Section 263 allowed the appellants to apply for revocation of the grant of Probate. The relevant extract of this section reads as under:

263. Revocation or annulment for just cause.- The grant of Probate or letters of administration may be revoked or annulled for just cause.

Explanation – Just cause shall be deemed to exist where -

(a) the proceedings to obtain the grant were defective in substance; or

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case; or

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

Illustrations

(i) -----

(ii) The grant was made without citing parties who ought to have been cited.

(iii) The will of which Probate was obtained was forged or revoked.

(iv)-(vii) -----

9. This would clearly show that it is necessary to cite parties who would otherwise have an interest in the succession to the estate of the deceased. That would naturally include all the heirs of the deceased. Besides, Section 263 gives power to the District Judge as regards the issue of citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of Probate. Necessarily therefore the facts on the basis of which the District Judge is required to exercise his discretion must be fairly placed before him. In this case the respondent had done nothing of the sort as we have already noticed.

10. The courts below also overlooked the fact that in their application for revocation the appellants had clearly stated that in other proceedings between the members of the family of Amaldas and the respondent the Will had been successfully disputed. In the circumstances, for the respondent to say that the grant was being opposed by "nobody" was misleading. The

grant was obtained by concealing from the court something which was very material to the case. The appellants were entitled to be heard and doubtless the District Judge would have directed to issue of citations to each of Amaidas's heirs on intestacy under Section 263(1) (c) of the Act had the true facts been revealed by the respondent in his application for grant of Probate. The advertisement in this case was wholly insufficient to patch up the gross lacuna."

8. The issue is settled by the decision of the Apex Court in the case of ***Manibhai Amaidas Patel*** (supra) and followed by the Co-Ordinate Bench of this Court in the case of ***Ajit Ramchandra Yadav vs. Daulat Shivaji Yadav*** (supra) that the issuance of public notice will not lead to inference that Appellant has sufficient knowledge of Probate proceedings.
9. In light of the settled position of law, as Appellants had an interest in the estate of the deceased, it was necessary to implead Appellants as party and to issue citations to the Appellants.
10. In light of the above, the issue is answered in favor of Appellants.
11. Resultantly, following order is passed:-

: O R D E R :

- [i] The impugned judgment dated 5th October, 2015 is hereby quashed and set aside.
- [ii] Civil Miscellaneous Application No. 21 of 2015 is restored to file of Joint Civil Judge, Senior Division, Sangli to be considered afresh after impleading present Appellants as parties to the Civil Miscellaneous Application.

[Sharmila U. Deshmukh, J.]