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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10624 OF 2023

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Kantabai Balkrishna Bhoite

... Petitioner

V/s.

Narayan Maruti Rode

... Respondent

Mr. Dhananjayrao Rananaware for the petitioner.

Mr. Vijay Killedar for the respondent.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 16, 2025

P.C.:

1. The respondent filed an application under the provisions of the Bombay Regulation Act, 1827, claiming heirship in relation to one Krushnaji Ramchandra Velamkar, relying on the rules of intestate succession as per the provisions of the Hindu Succession Act, 1956.

2. In such proceedings, the petitioner filed an application for impleadment on the ground that he has a caveatable interest, citing a registered lease deed executed in his favor, which has been rejected by the impugned order.

3. The Bombay Regulation VIII of 1827 provides a mechanism to facilitate estate administration without determining ownership rights. The grant or refusal of an heirship certificate under the

Regulation is not a decision on the title or rights to the property and remains subject to subsequent determination in appropriate legal proceedings.

4. This principle was reaffirmed in the decisions of this Court, particularly in *Aloysius Manuel Dsouza v. Mary Kamala William Manuel Dsouza*, (2006) MhLJ Online 27, where it was held that the rights of the appellants to the deceased's property remained unaffected by the grant of a certificate. It is also held that an heirship certificate neither establishes the title of the holder nor diminishes the rights of any competing claimants, who retain the remedy of filing a regular suit.

5. In *Ganpati Vinayak Achwal*, 2014 (6) Mh.LJ. 683, it was emphasized that an heirship certificate is merely a formal recognition of the claimant's existing status as an heir and does not create or transfer property rights.

6. In *Vilas Sadanand Sapre v. Civil Judge, Senior Division, Amravati* in Writ Petition No. 302/2011 decided on 16-3-2011 [2011 MhLJ Online 28, this Court clarified that the inquiry for granting an heirship certificate is limited to determining whether the applicant is an heir of the deceased, without delving into the title of the deceased or the claimant's ownership rights.

7. This Court has consistently affirmed the limited scope of the Regulation, emphasizing its procedural nature and the availability of substantive remedies through regular suits.

8. The scope of proceedings under the Bombay Regulation VIII of 1827 is narrowly defined. The scope of proceedings under the

provisions of the Bombay Regulation Act, 1827, is confined to adjudicating whether a person is a legal heir of the deceased. The regulation explicitly excludes adjudication on questions of title or complex civil rights related to property. The objective of the heirship certificate is not to confer property rights but to provide a formal recognition of heirs for the management and administration of the deceased's estate.

9. The primary purpose of an heirship certificate, as outlined in Clauses 1 and 2 of the Regulation, is to make transactions involving the estate of the deceased safer and more convenient for those in possession or indebted to the estate. As clarified in Clause 4 of the Regulation, if complicated or difficult issues arise, these must be resolved through a regular civil suit. Clause 7 specifically highlights that the certificate merely identifies the person temporarily managing the estate and does not resolve disputes or confer title. Rule 7 of the Regulation expressly provides that the certificate issued under the Act confers no proprietary title but merely recognizes a person as the manager of the deceased's estate.

10. Clause 8 of the Regulation ensures that the grant or refusal of an heirship certificate does not determine the substantive rights of the applicants or other parties. The refusal of a certificate does not preclude the applicant from pursuing a separate suit to establish their claim. Similarly, the grant of a certificate does not confer or take away any title or ownership rights.

11. The refusal or grant of an heirship certificate cannot be challenged in appeal or revision, as it does not constitute a determination of substantive rights. Rule 8 of the Regulation reinforces that refusal to grant a certificate does not preclude the applicant from instituting a suit to establish their claim. Similarly, when a certificate is granted, competing claimants retain the right to initiate proceedings to annul the certificate if they can establish a preferential claim.

12. Accordingly, any challenge to decisions under the Regulation must be pursued within the framework of its clearly defined scope and purpose.

13. In the present case reference to the Will Deed as a basis for claiming heirship is historical in nature, as the Court under the provisions of the Bombay Regulation Act, 1827 does not have the jurisdiction to conclusively adjudicate whether the Will has been executed in accordance with the provisions of the Indian Succession Act, 1925. Such conclusive inquiry is contemplated exclusively in probate proceedings under the Indian Succession Act, 1925, which are within the jurisdiction of competent civil courts. Probate proceedings involve a comprehensive examination of the authenticity, execution, and validity of a Will, and a certificate issued under the 1827 Regulation cannot substitute this formal process.

14. In my opinion, the remedy available to the petitioner is to institute substantive proceedings before the appropriate Court, seeking appropriate relief, depending on the nature of the

petitioner's claim and interest in the estate.

15. The petitioner retains the right to contest the validity or enforceability of the respondent's claim in a properly constituted suit, wherein issues related to the Will or competing claims to the estate can be conclusively determined. The petitioner's remedies in substantive proceedings remain unaffected by the observations in this judgment.

16. With the above clarifications, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)