

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.176 OF 2024

Dhanesh Daramaji Patil ...Applicant
vs.
Asha Anant Mhatre ...Respondent

Mr. Poonam Pal i/b. Mr. Sachin Hande, for the Applicant.
Mr. Omkar Paranjape, for Respondent.

CORAM : N. J. JAMADAR, J.
DATE : FEBRUARY 28, 2025

P.C:

1. Heard the learned counsel for the applicant.
2. This is an application under section 24 of the Code of Civil Procedure, 1908 for transfer of Misc. Application No. 11 of 2020 from the Court of Civil Judge, Senior Division, Rahata to the Court of Civil Judge, Senior Division, Thane.
3. The respondent No. 1 has filed an application for grant of heirship certificate in the name of the applicant and opponent thereto, (including the applicant herein who is impleaded as opponent No. 1 in the said application) in respect of the property described in the Schedule, belonging to Yamnubai D. Patil, before the Civil Court at Rahata.
4. The respondent No. 1 has also filed Misc. Civil Appeal No. 1148 of 2019 seeking the heirship certificate in the name of

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respondent No. 1, the applicant herein and other opponents in respect of the suit property described in the schedule belonging to Yamuna Patil, before the Civil Court at Thane.

5. The applicant has preferred this application for transfer of Misc. Application No. 11 of 2020 filed before the Civil Court at Rahta asserting that the applicant and respondent are residing within the local limits of the jurisdiction of Civil Court at Thane, the heirship applications before two different Courts may lead to conflicting decisions and on the ground of inconvenience of the applicant also.

6. The learned counsel for the respondent No. 1 resisted the application. It was submitted that the Court of Civil Judge, Senior Division, Rahata has the subject matter jurisdiction. The applicant had filed an application for rejection of the said application under Order 7 Rule 11 of the Code of Civil Procedure, 1908. The said application was rejected. The said order has been assailed in Criminal Revision Application before the Aurangabad Bench of the Bombay High Court. The proceeding in heirship certification application has been stayed. In these circumstances, merely for the inconvenience of the party the proceeding cannot be transferred, urged the learned counsel for respondent No. 1.

7. On first principles, the objection does not merit countenance.

An application for heirship certificate does not involve the element of subject matter jurisdiction based on the situs of the property of the deceased. In fact, the question of title to the property of the deceased is alien to an inquiry for the grant of heirship certificate under the Bombay Regulation VIII of 1827. The Court dealing with an application for heirship certificate does not confer the status of an heir. It only recognizes the existing status of the heir.

8. In this view of the matter, it would be expedient in the interest of justice that both the applications for heirship certificate are decided by one and the same Court so as to obviate the possibility of conflicting decisions. Moreover, the parties are stated to be residing within the local limits of the jurisdiction of the Civil Court at Thane. None of the parties would suffer inconvenience in the event the application is transferred from the Court of Civil Judge, Senior Division, Rahata to the Court of Civil Judge, Senior Division, Thane.

Hence, the following order.

ORDER

1] Application stands allowed in terms of prayer clause (a).

2] The Misc. Application No.11 of 2020 stands transferred from the Court of Civil Judge Senior Division, Rahata to the Court of Civil Judge, Senior Division, Thane for hearing and disposal in

accordance with law.

3] The learned Civil Judge, Rahata shall transfer the record and proceedings in Misc. Application No. 11 of 2020 with such dispatch that it reaches the Court of C.J.S.D. at Thane within a period of four weeks from the date of communication of this order.

4] Both Misc. Application No.11 of 2020 and Misc. Civil Appeal No. 1148 of 2019 be heard and decided together, as expeditiously as possible.

Application disposed.

(N. J. JAMADAR, J.)