
(2016) 03 BOM CK 0136

In the Bombay High Court

Case No : Miscellaneous Petition (L) No. 2428 of 2015

Ankit Bhagwaticharan Verma

APPELLANT

Vs

Vinita Ankit Verma

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Citation : (2016) 5 ALLMR 412 : (2016) 4 BCR 860 : (2016) 3 MhLJ 543

Hon'ble Judges : G.S. Patel, J.

Bench : Single Bench

Advocate : Gajendra Jaywant Waity, for the Appellant;

Final Decision : Allowed

Judgement

G.S. Patel, J.—1. This is the usual application for issue of a Legal Heirship Certificate under Section 2 of Bombay Regulation VIII of 1827. The case of this Petitioner is that she is the widow of one Ankit Bhagwaticharan Verma, who died in Kalyan on 11th May 2015. During his lifetime, the deceased lived in Mumbai. The Petitioner says that the deceased died intestate. A copy of his death certificate is annexed. The Petitioner says that the deceased was survived by herself and their two children, a daughter aged 16 years and a minor son aged 8 years. These three names are mentioned in the tabulation below paragraph 4 of the petition. Below this paragraph is one sentence that the mother of the deceased, Ankit's mother died before him. It is on this statement that the department seems to have taken some sort of objection and asked for production of the death certificate of the deceased's mother.

2. I am unable to understand why and on what basis under the Bombay Regulation VIII of 1827 any such objection is being raised. It cannot be an invariable requirement in each and every case. In a particular case if a Court feels, on the facts of that case, that it requires to be further satisfied on about the genuineness of that application, then a Court may certainly in its discretion ask for additional documents. But in doing this, the Court must have regard to

the nature of the application and what is intended by it and what the Regulation itself provides.

3. In the first place Regulation 1 of the Bombay Regulation VIII of 1827 says that where a person dies leaving property of any description, the heir, executor or administrator may assume the management or sue for recovery of the property in conformity with law or applicable usage without making any previous application to the Court to be formally recognised.

4. Section 2 then says that if an heir, executor or administrator wishes to have his right formally recognised, an application is to be made to Court. Section 2 is interestingly worded. It reads thus:

"2. First. But if an heir, executor or administrator is desirous of having his right formally recognized by the Court; for the purpose of rendering it more safe for persons in possession of, or indebted to, the estate to acknowledge and deal with him, the Judge, on application, shall issue a proclamation, in the form contained in Appendix A, inviting all persons who dispute the right of the Applicant to appear in the Court within one month from the date of the proclamation and enter their objections, and declaring that, if no sufficient objection is offered, the Judge will proceed to receive of the proof of the right of the Applicant, and, if satisfied, grant him a certificate of heirship, executorship or administratorship.

Second. [Publication for proclamation] Rep. Act, XII of 1873."

5. Read together, Sections 1 and 2 can only mean that no heirship application is absolutely necessary in law, but the application is only meant to allow an heir, executor or administrator who wishes to have an heirship certificate at his option so that, in the words of the statute, it is "more safe" for others who are dealing with the deceased's assets to acknowledge and deal with such heir, executor or administrator.

6. Section 2 also provides for the issuance of proclamation; yet another safeguard. Sections 3 and 4 deal with the process that follows. Section 4 makes it clear that the investigation is of a summary nature and that if the issue is complicated the Court may suspend the proceedings in the application for a certificate until the question has been tried by a regular suit instituted by one of the parties.

7. We are not concerned with Section 5 which deals with the authenticity of a Will. We are, however, concerned with Section 7 which needs to be set out in full. It has three parts and they read thus:

"7. First. - An heir, executor or administrator, holding the proper certificate, may do all acts and grant all deeds competent to a legal heir, executor or administrator, and may sue and obtain judgment in any Court in that capacity,

Second. - But, as the certificate confers no right to the property, but only indicates the person who, for the time being is in the legal management thereof,

the granting of such certificate shall not finally determine nor injure the rights of any person; and the certificate shall be annulled by the Zilla Court, upon proof that another person has a preferable right.

Third. - An heir, executor or administrator, holding a certificate, shall be accountable for his acts done in that capacity to all persons having an interest in the property, in the same manner as if no certificate had been granted."

8. This clearly establishes that a certificate issued under Bombay Regulation VIII of 1827 confers no right to any property. It only indicates a person who (for the time being) is in the legal management of it. It can always be annulled on proof that another person has a preferable right.

9. I would imagine that in view of these provisions, it is wholly unnecessary for the Registry to display such extraordinary caution or timidity and to demand ancestral death certificates. A statement made by the Petitioner is that the deceased's mother predeceased the deceased is surely sufficient, for it is made on oath.

10. I am also unable to understand why the department insists on death certificate of only one of the parents of the deceased. If this is a requirement of law, then surely the department must ask for the death certificates of both parents of the deceased; and by logical extension, the death certificates of their parents on each side, and so on to the end of the chapter, going back countless generations.

11. If this is the kind of procedure is to be followed for issuance of mere certificate that confers no right to the property, does not finally determine nor injure the right of any person and the issue of which is only to make it safer for a third party to deal with the Applicant, then no Heirship Certificate will ever be granted by this Court, for every Applicant will probably spent his entire lifetime gathering death certificates going back decades or even centuries. No one can make such demands unthinkingly. What if the deceased's mother died decades ago, before the Petitioner married the deceased? What if the mother died somewhere else and not in Mumbai?

12. I wonder too what the department makes of the second sentence below the table and paragraph 4. Here, the Petitioner states that "the deceased had no other son and daughter save and except those mentioned herein and there are no other heirs left by the deceased". If the department wants the death certificate of the deceased's mother then it remains unexplained why the department does not seek the birth certificates of these children or some other obscure proof that he had no other children or no other heirs. The whole purpose of this Petition would be lost.

13. This approach says more about our Courts, none of it very good, and less about a petitioner. We are not here to be mindlessly obstructive and to tell applicants who come before us that this or that cannot be done and to show

them the door. We are here because they have a legal problem, for which there is always an answer in law. We are not, in this, to be unmindful of either law or procedure. The former must be followed. But where it contains no fatal restrictions, to invoke the latter, our rules of procedure, to defeat an otherwise proper application is unjust. Our rules must serve the cause, not defeat it. We cannot let the best be the enemy of the good. We certainly cannot allow the handmaiden of justice to become its dominatrix.¹

14. Consequently, unless in a particular case the Court after applying its mind and, I expect, for some brief reasons, as is usually done, production is required of a death certificate of a person said to have predeceased the one in respect of whom the Heirship Certificate, the department is not to insist on the production of such documents.

15. The present Petition is listed for directions. The departmental requisitions are dispensed with. The statement of the Petitioner that there are no other legal heirs are accepted. The Proclamation is dispensed with. The Petition is made returnable on 23rd March 2016.

16. All concerned to act on an authenticated copy of this order.

1 Kailash v Nanhku, , (2005) 4 SCC 480; reaffirmed and applied in Jagatjit Industries Ltd. v The Intellectual Property Appellate Board & Ors., , 2016 SCC Online 58.