

(2014) 01 BOM CK 0041

In the Bombay High Court

Case No : Civil Revision Application No. 238 of 2012

Ankush

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Succession Act, 1925 — Section 317, 370, 372, 374, 375

Citation : (2014) 5 ABR 42

Hon'ble Judges : A.I.S. Cheema, J

Bench : Single Bench

Advocate : B.A. Dhengale, Advocate holding for N.G. Kale, Advocate for the Appellant; K.J. Ghute Patil, A.G.P., A.V. Hon, Advocate h/f. V.D. Hon, Advocate and A.M. Gholap, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.I.S. Cheema, J.—The Revision Petitioner was objector in Misc. Application No. 135 of 2007 filed by Respondent No. 4 Sangeeta alias Nirmala widow of Ramrao Patil which she filed for Heirship Certificate (hereinafter Nirmala to be referred as "Applicant" and present Petitioner Ankush as "Non Applicant"). The other Non Applicants in the Application were present Respondent Nos. 1 to 3.

2. The Civil Judge, Senior Division, Ahmedpur before whom the Misc. Application was moved, rejected the application for Heirship Certificate. The Applicant Sangita carried the Appeal No. 29 of 2011 and it came up before District Judge 1 Ahmedpur, who allowed the appeal and directed issuance of Heirship Certificate. Thus the Non Applicant Ankush has now brought this Revision Petition.

3. To understand controversy, the facts in brief can be stated to be as under:

(A). The Applicant Sangita filed the application claiming to be widow of deceased Ramrao Patil who died on 27th April, 2006. It was claimed that Ramrao Patil had wife Nirmala and after her death, after fifteen years Ramrao Patil married with

the Applicant and so even her name (i.e. of the Applicant) was kept as Nirmala. Thus she referred herself as Sangita alias Nirmala widow of Ramrao Patil. Ramrao was working at Panchayat Samitee as Gramsevak and on his death, Applicant claimed his family pension and for the purpose, she was seeking Heirship Certificate.

(B). In response to newspaper notice, the Non Applicant appeared before the trial Court and claimed that Will has been executed by deceased Ramrao and he has mentioned his heirs in the Will. In the Will there is no reference to the Applicant as wife of deceased Ramrao. He claimed that the Applicant had no connection with Ramrao. The wife of Ramrao was Nirmalabai who died in 1985. Trial Court discussed the evidence brought before it and rejected the Application as mentioned.

(C). District Judge, Ahmedpur in Appeal brought u/s 384 read with 388 and 390 of the Indian Succession Act, 1925 (hereinafter referred as "Succession Act") framed points for consideration. The first point raised was, whether the Petitioner (original Applicant) was legally wedded wife of deceased Ramrao and answered the same in the affirmative. The District Judge has then held that Applicant was entitled to receive the pension of deceased Ramrao as also she was entitled to receive the Heirship Certificate. The District Judge, thus, set aside the Judgment of the trial Court, and directed issue of Heirship Certificate to Applicant so that she can receive the pension.

4. Learned counsel for Non Applicant (present Petitioner) claimed that he is son of deceased Ramrao and according to him the trial Court rightly held that the Applicant was not legally wedded wife. According to him, in the evidence Applicant had accepted that she had earlier married one Shivaji Biradar when she was a child. According to learned counsel, because of this, even if marriage is said to have been solemnized with Ramrao, the same would not be valid. It is argued that the District Judge referred to stray admission of the Non Applicant that the Applicant was entitled to the pension and on that basis granted order in favour of the Applicant. It is submitted by him that District Judge wrongly relied on developments in the proceedings u/s 125 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") which were earlier filed by the original Applicant. Thus, the Judgment passed was wrong. The District Judge has misread the voters list also, according to the counsel.

5. Against this, learned counsel for the original Applicant has submitted that application in the trial Court was filed on the basis of Bombay Regulation VIII of 1827 which are to be read with Section 388 and 390 of the Succession Act. The learned counsel stated that other than pension, for other properties of Ramrao, he (Ramrao) had executed a Will and the properties have been given to the Non Applicant and other family members, which he is not contesting. According to him, the appellate Court rightly relied on proceedings u/s 125 of the Cr.P.C. which were brought by the Applicant against Ramrao in the life time of Ramrao to accept that the Applicant had the status of wife. The learned counsel for

original Applicant accepts that the scope of application as brought in the trial Court is limited to the extent of seeing if she was preferable heir, entitled to the pension. The learned counsel referred to the evidence of the Non Applicant where Non Applicant accepted that the Applicant was entitled to the pension. Learned counsel submitted that inspite of the present proceedings, question of status can still be challenged by way of a suit, if required.

6. If the Bombay Regulations referred above are perused, Chapter I provides for "Rules for the Recognition of Heirs, Executors and Administrators when there is a Competent Claimant". When such application is moved, proclamation is required to be issued. Rule 4 provides as under:

" Objection appearing to be examined and recognition given or refused accordingly:

4. First: If, before the expiration of the time, any objection is made to the right of the person claiming as heir, executor or administrator, the Judge, on a day to be fixed (of which at least eight days" previous notice shall be given to the parties), shall summarily investigate the grounds of the objections on the one hand, and of the right claimed on the other, examining such witnesses or other evidence as may be adduced by the parties, and either grant or refuse a certificate, as the circumstances of the case may require.

Second: If question is complicated or difficult, matter to be left for adjudication:

But if from the evidence adduced, it appears that the question at issue between the parties is of a complicated or difficult nature, the Judge may suspend proceedings in the application for a certificate until the question has been tried by a regular suit instituted by one of the parties."

Thus, summary investigation has been provided. Rule 7 in Para 2 provides as under:

"Second: But recognition gives no title to property:

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 Zila Court, upon proof that another person has a preferable right."

Rule 8 also mentions that refusal of a certificate by the Judge shall not finally determine the rights of the person whose application is refused, but it shall still be competent to him to institute a suit for the purpose of establishing his claim.

7. Learned counsel for the original Applicant referred to Section 390 of the Succession Act to submit that these Regulations have been linked with the provisions of the Succession Act. Section 390 of the Succession Act reads as under:

"390. Provisions with respect to certificates under Bombay Regulation VIII of 1827. Notwithstanding anything in Bombay Regulation No. VIII of 1827, the provisions of section 370, sub section(2), section 372, sub section (1), clause (f), and sections 374, 375, 376, 377, 378, 379, 381, 383, 384, 387, 388 and 389 with respect to certificates under this Part and applications therefor, and of section 317 with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as they can be made applicable, apply, respectively, to certificates granted under the Regulation, and applications made for certificates thereunder after the 1st day of May, 1889, and to the exhibition of inventories and accounts by the holders of such certificates so granted."

8. If the above provisions are kept in view, it is clear that it was a mere application for Heirship Certificate which had been filed before the trial Court and it required only a summary investigation to see if Applicant had a preferable right to the Heirship Certificate.

9. The District Judge kept in view the proceedings earlier filed by original Applicant against Ramrao in his life time which were u/s 125 of the Cr.P.C. and observed that in those proceedings Ramrao has not challenged the status of original Applicant as his wife. Reference was made to the deposition in that matter where the original Applicant was accepted to be wife. Reference was also made to the fact that the first wife of Ramrao, namely, Nirmala had died in 1985 and in the voters list prepared in 2002, Nirmala Ramrao Patil was shown as wife of deceased Ramrao. The voters list was relied on by the District Judge in the context of the claim of the original Applicant that after her marriage with Ramrao, she was renamed as Nirmala. District Judge referred to the evidence of original Applicant that her marriage had been solemnized with one Shivaji in her childhood. District Judge observed that it cannot be said that marital relation between original Applicant and Shivaji Biradar is still subsisting. Although maintainability of this finding in particular may be doubtful, still the present Petition being Revision, the finding of fact regarding marriage between deceased Ramrao and Applicant which is based also on other evidence, I would not like to unsettle the same. This is specially so in the context that in any case the question whether or not the said marriage could be said to be legal marriage, can be settled only by way a suit and not in a proceedings which is summary in nature. I thus do not find that the First Appellate Court acted in exercise of jurisdiction illegally or with material irregularity. For such reasons there is no substance in the Revision Application.

10. Revision Application is rejected. Parties to bear their own costs.