

(2008) 03 BOM CK 0028

In the Bombay High Court

Case No : Notice of Motion No. 104 of 2007 in Suit No. 22 of 2004 in Petition No. 243 of 2004

Ashitkumar Surendra Mehta

APPELLANT

Vs

Trilochanaben Thakorlal Fojdar and Others

RESPONDENT

Date of Decision : 03-03-2008

Acts Referred:

Hindu Succession Act, 1956 — Section 8, 9

Citation : (2008) 4 BomCR 372

Hon'ble Judges : Daga V.C., J

Bench : Single Bench

Advocate : T.G. Vora and D.R. Mishra, for the Appellant; Parag Kalhe, instructed by Udaipuri and Co. for Defendant Nos. 1, 2 and 3, for the Respondent

Judgement

Daga V.C., J.—Heard learned Counsel for the parties.

2. Perused Notice of Motion.

3. This Notice of Motion is taken out by the petitioner/plaintiff seeking declaration that the Caveats dated 28th June, 2006, filed by Ms. Pana Krishnalal Shah (Caveator/respondent No. 2), Mr. Jitendra Krishnalal Shah (Caveator/respondent No. 3) and Caveat dated 28th April, 2004, filed by Kishore Krishnalal Shah (Caveator/respondent No. 4), are not maintainable and as the Caveators (have neither locus standi nor caveatable interest in the subject-matter of the estate.

4. The reliance is placed by the learned Counsel appearing for the plaintiff on unreported Judgment of this Court in the case of Mr. Kenin Garvil Nunes v. Mr. Rajendra Krishnarao Divecha passed on 25th July, 2002 (Smt. Justice K.K. Baam), which clearly supports the contentions raised by the plaintiff.

The learned Counsel appearing for the caveators, initially prayed for adjournment. At this juncture, it is relevant to note that prior to this, matter was adjourned for more than 4 to 5 times. Apart from this, when the arguments were opened by the learned Counsel for the plaintiff, he did not pray for adjournment.

Hence, prayer for adjournment was rejected. He tried to oppose Notice of Motion contending it is not tenable.

5. In order to understand the foundation of the Notice of Motion, it is necessary to reproduce the genealogy and the relationship of the present caveators with the deceased Jaswantbhai N. Jolia, the same is thus reproduced hereinbelow for immediate reference.

6. The perusal of the above genealogy shows that Jaswantlal N. Jolia died on 26th January, 2004, leaving behind Mrs. Trilochanaben T. Fozdar (sister and one of the caveator) and Kanayalal N. Dalai (brother), who expired on 10th May, 2007.

7. The present caveators Ms. Pana Krishnalal Shah, Mr. Jitendra Krishnalal Shah and Mr. Kishore Krishnalal Shah are claiming interest in the property through their mother Mrs. Ramaben K. Shah, who was the sister of late Jaswantlal N. Jolia. Mrs. Ramaben K. Shah died in the month of November, 2002.

8. The aforesaid factual matrix, if examined, on the touchstone of Section 8 r/w. Section 9 of The Hindu Succession Act, 1956 (the "Act"), it would be clear that the succession opens on the date of death. Jaswantlal N. Jolia died on 25th January, 2004. Thus, succession opened on 25th January, 2004. Situation prevailing a day before the date of death is required to be taken into account to consider the issue of succession. On 25th January, 2004, Mrs. Ramaben K. Shah (sister) was not alive, she expired in the year 2002 itself. Hence, Mrs. Trilochanaben T. Fozdar and Kanayalal N. Dalai were the surviving heirs being sister and brother as per the Class II, Entry II, Items (3) and (4) of the Schedule of the Act. The present caveators, who are children of late Ramaben K. Shah i.e. who predeceased the deceased, would fall under Item (2), Entry IV of Class II.

9. With the above factual position, let me turn to Section 9 of the Act, which reads as under:

9. Order of succession among heirs in the Schedule: Among the heirs specified in the Schedule, those in Class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in Class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

10. In view of the clear legal and factual position is brought on record, caveators are not the next kin and kith of the deceased. They are not entitled to inherit property of the deceased. The plaintiff is, thus, justified in contending that the caveators have no locus or caveatable interest to maintain the present caveat filed by them.

11. In the result, Notice of Motion No. 104 of 2006 is made absolute in terms of prayer Clause (a) and accordingly disposed off. In the above view of the matter, Caveats are rejected with no order as to costs.