

**(2018) 03 BOM CK 0104**

**In the Bombay High Court**

**Case No :** Misc. Civil Application (Review) No.1211 of 2017 In  
Civil Revision Application No.91 of 2016 (D)

BABAN RAMCHANDRA SHUKLA AND OTHERS

APPELLANT

Vs

PARAG ARVIND SHUKLA AND ANOTHER

RESPONDENT

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**Date of Decision :** 20-03-2018

**Acts Referred:**

Code of Civil Procedure, 1908 — Order 7 Rule 10, Section 16

**Citation :** (2018) 03 BOM CK 0104

**Hon'ble Judges :** MANISH PITALE, J

**Bench :** Single Bench

**Advocate :** S.R. Deshpande, D.A. Mahajan

**Final Decision :** Dismissed

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**Judgement**

1. By this review application the applicants seek review of the judgment and order dated 30-06-2017 passed by this Court, whereby Civil Revision

Application No.91 of 2016 filed by the applicants was dismissed by the said order and the order dated 14-09-2016 passed by the Court of Joint Civil

Judge Senior Division, Nagpur stood confirmed, whereby the application for grant of heirship certificate filed by the applicants under the Bombay

Regulation VIII of 1827 (hereinafter referred to as the "Regulation") was rejected.

2. The facts in brief pertaining to the present case are as under:

One Eknath Ganesh Kasture was the owner of the land bearing Survey No.138 situated at Mouza Patunda, Tah. Nandura, District Buldhana and

house bearing No.328 situated at village Alampur, Tah. Nandura. He died in the year 1958, leaving behind his widows Janabai, son Laxman and

married daughter Nanibai. Janabai died on 01-12-1981. She was survived by

the two sons by name Arvind and Baban and two daughters by name Nanibai and Malti. Laxman died on 02/12/2009 and his wife Vimal died on 21/07/1992. Arvind, the son of Nanibai, died on 30/12/1998 and his wife Sindhu died on 08/02/2004. They were survived by non-applicant no.1 Parag and non-applicant no.2 Sharad. Baban, Nalini, Devki @ Malti, who were the children of Nanibai, are the applicants in this case.

3. According to the applicants, during her life time Nanibai had executed Will in favour of her son on 01/10/2003, which was registered on 15/10/2003 before Sub-registrar, Nagpur, bequeathing her property and share in favour of her son applicant no.1 Baban. On the basis of this will deed

executed by Nanibai, the applicants herein filed the application for grant of heirship certificate under the provisions of Bombay Regulation VIII of 1827, submitting that they have become the owners of the property left behind by Eknath, which was succeeded by Nanibai and she had bequeathed

the same to applicant no.1 Baban. It was also contended that as Laxman had died issueless, his share in the property also devolved upon the

applicants and hence they were entitled to manage the whole of the property left behind by Eknath.

4. On this application filed by the applicants, a citation was published on 17/02/2012 in daily 'Tarun Bharat' Akola vide Exh.12. No objections

were received within the stipulated period of one month from the publication of citation. However, six months thereafter, on 06/10/2012 the non-applicants herein raised objection by filing detailed reply vide Exh.18.

5. Therefore, to prove their claim for heir ship certificate to the property left behind by Eknath and then by Nanibai, applicant no.1 examined himself

and led evidence of the attesting witness Shridhar Paunikar and the scribe to the Will, namely Advocate Ram Bhide. Accordingly the said Will of

Nanibai was proved vide Exh.66. Applicants then also relied upon the pursis, which was filed by non-applicant in another proceeding between the

parties, in which they had admitted the execution and contents of the Will of Nanibai and stated that they had relinquished their share in the said

property and hence their names should not be brought on record. The applicants relied upon these two pursis filed by non applicant no.1 Parag and

non-applicants no.2 Sharad on 08/03/2005 vide Exhibits 58 and 59 in R.C.S. No.12 of 1992. It was thus contended by applicants before the trial

Court that they were now entitled to get the heirship certificate, on the basis of the Will executed by Nanibai and in view of the pursis filed by non?

applicants admitting the execution and contents of the said Will and relinquishing their rights in the properties.

6. The trial Court, while rejecting the application for grant of heirship certificate, held that since the applicants were claiming to be the legal heirs of deceased Nanibai on the basis of the aforesaid Will, it would be more appropriate for them to file appropriate proceeding before the Civil Court for proving their claim. It was also noticed by the trial Court that already the parties had filed certain suits against each other and that therefore, the grievance sought to be made out by the applicants would be taken care of. In such proceeding while rejecting the application, the trial Court also observed that the application for grant of legal heir certificate had been filed by the applicants in the Court at Nagpur while all the properties in respect of which such certificate was claimed were located in district Buldhana. Therefore, the Court at Nagpur lacked territorial jurisdiction.

7. By the judgment and order dated 30/06/2017, while confirming the findings of the trial Court in respect of the merits of the matter, this Court specifically held that the application filed by the applicants herein under the aforesaid Regulation for grant of heirship certificate was before the Court which did not have territorial jurisdiction. By referring to provision of Section 16 of the Code of Civil Procedure, this Court in the said judgment and order has held that the trial Court was right in concluding that the Court at Nagpur did not have territorial jurisdiction as all the immovable properties which pertained to the application for grant of heirship certificate were admittedly located in the local limits of the Court at Buldhana district. Thus, this Court in the said judgment and order held that the Court at Nagpur did not have jurisdiction to consider the application for grant of heirship certificate.

8. In this context, Shri Deshpande, learned Counsel appearing on behalf of the applicants submitted that once this Court had come to the conclusion that the Court at Nagpur lacked territorial jurisdiction, it ought not to have entered into the arena of merits of the case. The learned Counsel for the applicants contended that both the trial Court and this Court had no other option but to return the application filed by the applicants herein under the aforesaid Regulation to be presented before the appropriate Court having jurisdiction. According to the learned Counsel for the applicants, no

discussion or findings could have been entered into and no findings could have been rendered insofar as the merits of the application for grant legal

heir certificate was concerned. The learned Counsel relied upon judgment of the Hon'ble Supreme Court in the case of Kiran Singh and others vs

Chaman Paswan and others, reported at AIR 1954 SC 340, wherein, it has been held by the Hon'ble Supreme Court that a decree passed by a Court

without jurisdiction is a nullity.

9. On the other hand, Shri D. A. Majahan, learned Counsel appearing on behalf of the non-applicants, submitted that each and every error in an order

could not be corrected in review jurisdiction and that the applicants herein were virtually asking this Court to exercise appellate jurisdiction in order to

interfere with the said judgment and order dated 30-06-2017. The learned Counsel further submitted that the Court exercises very limited jurisdiction

while considering a review application and that the applicants had to point out an error apparent on the face of record to justify interference with the

aforesaid judgment and order passed by this Court.

9. Having heard the learned Counsel appearing for the parties, the question that arises for consideration is, whether the applicants have demonstrated

an error apparent on the face of record in the judgment and order dated 30-06-2017 and whether having rendered the finding that the Court at

Nagpur had no jurisdiction to entertain the application for grant of legal heir certificate filed by the applicants, this Court and the trial Court could have

decided the application on merits.

10. In the aforesaid judgment and order dated 30-06-2017, this Court has specifically dealt with the question as to whether the Court at Nagpur has

territorial jurisdiction at all to consider and entertain the application for grant of legal heir certificate filed by the applicants under the aforesaid

Regulation. In that context, this Court has held as follows :—

—There is also much substance in the finding arrived at by the trial Court that as the properties are situated in territorial jurisdiction of the Court in

Buldhana District, the Court at Nagpur, cannot be said to be having territorial jurisdiction to entertain this application. The provisions of Section 16 of

the Code of Civil Procedure are very material to that effect, which are reproduced herein under :

16. Suits to be instituted where subject-matter situated. Subject to the

pecuniary or other limitations prescribed by any law, suits?

(a) for the recovery of immovable property with or without rent or profits.

(b) for the partition of immovable property.

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property.

(d) for the determination any other right to or interest in immovable property

(e) for the compensation of wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situated;

provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where

the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the

property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carried on business, on

personally works for gain.

Thus, as per this section, even for the determinant of any right or interest to immovable property or for compensation for wrong to immovable property

also, the suit has to be instituted in the Court within the local limits of whose jurisdiction the property is situate. Herein in the case the applicants are

claiming heirship certificate and thereby calling upon the Court to determine his right or interest in the immovable property, which is situate within the

local limit of the Court in Buldhana District and not within the local limit of the Court at Nagpur, where the application is filed. Therefore, on this count

also, the learned Trial Court has rightly held that it was not having territorial jurisdiction to entertain the application for grant of heirship certificate.?

12. Thus, this Court confirmed the finding of the trial Court that the Court at Nagpur did not have territorial jurisdiction to entertain the application for

grant of heirship certificate filed by the applicants under the aforesaid Regulation. Having rendered the said findings, any further finding rendering by

the trial Court as well as this Court on merits of the claim raised by the applicants in their application, were without jurisdiction. The discussion on

merits and findings rendered could not have been embarked upon by the trial

Court or this Court, having given a finding that the Court at Nagpur had no jurisdiction to entertain the application. In this context, Order 7 Rule 10 of the CPC is relevant which provides that once the Court at any stage of the suit finds that it lacks jurisdiction it shall return the plaint to be presented to the Court in which it should have been filed. In this context, the judgment of this Court in the case of Shreyans Industries vs State of U.P. and others, reported at 2004(1) MHLJ 50 is relevant. It has been held therein in paragraph 6 as follows:Â?

â??6. I have considered the contentions canvassed by the learned Counsel for the parties. On the backdrop of the above referred facts, it is evident that the plaint was returned to the appellant/plaintiff under Order VII Rule 10 of Code of Civil Procedure since the trial Court had held that it does not have jurisdiction to try the suit and, therefore, appellant is required to present the plaint in the competent Court having jurisdiction to try the suit. Once the Court comes to the conclusion that it has no jurisdiction to entertain the suit, the only course open to the Court is to return the plaint to the plaintiff to be presented in the competent Court and any finding recorded on merits of the matter would be of no consequence. If plaint is returned for want of jurisdiction and the same Court also records the findings on merits, such findings are without jurisdiction and the same Court also records findings on merits, such findings are without jurisdiction and null and void. Similarly, the very purpose of returning the plaint for want of jurisdiction would be frustrated and that would also foreclose the issue in the plaint, which was returned to the plaintiff to be presented to the competent Civil Court. In view of this legal position, the findings recorded by the trial Court on issue Nos. 1, 2 and 3 are without jurisdiction and it will be open for the competent Court at Lucknow to consider the entire claim of the appellant/plaintiff on its own merits. In the circumstances, the applicant is entitled to take back the plaint from the trial Court at Nagpur and file the same in the appropriate Court at Lucknow within a period of ninety days from today, failing which the suit shall be deemed to have been dismissed.â??

13. It has been further held in the case of Sureshkumar s/o Rochiram Jagyasi vs Maharashtra State Electricity Distribution Company Ltd., Nagpur reported at 2014(4) MH LJ 947 as follows:

â??13. Rule 10, as can be seen from the language employed therein, confers

power upon the Court to return the plaint at any stage of the suit for its being presented before the Court in which the suit has to be instituted, once the Court comes to the conclusion that the suit should have been filed, not in that Court but in some other Court, and obviously it implies disability of the Court to try the suit on jurisdictional issues. This power can also be exercised by the Court of appeal or revision, and the appellate or revisional Court can return the plaint after setting aside a decree passed in a suit.

This has been made clear by explanation to the sub-rule (1) of Rule 10.

14. Upon reading Rule 10 and Rule 10A, it appears that scheme of these provisions is to leave the Civil Court with only one option of returning the plaint and not of dismissing the suit if it is of the opinion that it cannot try the suit. The power under Rule 10 is not intended to affect the merits of the suit or otherwise there would have been no further power conferred for fixing the date of appearance of parties in the Court where the plaint is proposed to be presented.

15. In the case of RSDV Finance Company (supra), the Hon'ble Apex Court has laid down that when a Court has no jurisdiction to try the suit, the only course to be adopted in such a situation is to return the plaint for its presentation to the proper Court and not to dismiss the suit. Relevant observations of the Hon'ble Apex Court appearing in para 7 are extracted as follows :

“.... The Division Bench was totally wrong in passing an order of dismissal of suit itself when it had arrived to the conclusion that the Bombay Court had no jurisdiction to try the suit. The only course to be adopted in such circumstances was to return the plaint for presentation to the proper Court and not to dismiss the suit....”

16. These observations make the position clear and settle the law governing power of Civil court under the provision of Rule 10 of Order 7 of Civil Procedure Code. This provision leaves a Civil Court with no option but to return the plaint and confers no power on the Civil Court to dismiss the suit.

In these circumstances, I find that the learned Counsel for the appellant is right when he submits that District Judge should not have dismissed the suit and, should have at the most return the plaint to the appellant to be presented before proper Court. Learned District Judge has therefore, committed a serious error of law in dismissing the suit. The question No.1 is answered

accordingly.â??

14. Thus, from the proposition of law that emerges from the judgments referred to above, it is clear that once the Court holds that it does not have jurisdiction to consider the application/petition/ suit filed before it, it has no option but to return such proceeding filed before it, to be presented before appropriate Court. In this view of the matter, it appears that this Court while passing judgment and order dated 30Â06Â2017 lost sight of the aforesaid position of law and while confirming the finding of the trial Court regarding lack of jurisdiction, this Court went ahead to consider and decide the application on merits. To that extent, the said judgment and order of this Court is required to be reviewed. As regards the contention raised on behalf of the nonÂ applicants that review jurisdiction is very limited and that the Court cannot exercise appellate powers while deciding an application for review, there can be no quarrel with the proposition of law but, at the same time when there is an error apparent on the face of record, in my view, the application for review deserves to be allowed. Accordingly, the application for review filed by the applicants in the instant case is allowed.

15. It is held that upon confirmation of the finding regarding lack of territorial jurisdiction of the Court at Nagpur regarding the application for grant of heirship certificate filed under the aforesaid Regulation, no further enquiry into the merits of the matter could have been made. Hence, it is held that since the Court at Nagpur does not have jurisdiction to consider the application filed by the applicants herein for grant of heirship certificate under the aforesaid Regulation, the said application is returned to the applicants to be presented before the appropriate Court. Accordingly, this Misc. Civil Application stands allowed. The order dated 30Â06Â2017 passed by this Court is set aside, to that extent. Consequently, the Civil Revision Application is partly allowed. The order dated 14Â09Â2016 passed by the Court of Joint Civil Judge Senior Division, Nagpur in MJC No.279/2011, is set aside to the extent of findings on merits. Since the original record has been received in this Court, the office is directed to return the original application filed by the applicants under the aforesaid Regulation, to be presented before the appropriate Court. If the applicants fail to present the said application before the appropriate Court within a period of 90 days from today, it shall be deemed to be dismissed.

16. Needless to say that the Court before whom this application is presented shall consider the application on its own merits, without being influenced by the order passed by the trial Court and this Court. No order as to costs.