

(2017) 06 BOM CK 0207
In the Bombay High Court
Case No : 91 of 2016

Baban Ramchandra Shukla, & Ors.

APPELLANT

Vs

Parag Arvind Shukla, & Anr.

RESPONDENT

Date of Decision : 30-06-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 16](#)/
[Section 16\(d\)](#) - Suits to be instituted where subject-matter situate - Suits to be instituted where subject-matter situate

Citation : (2017) 06 BOM CK 0207

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

Advocate : S.R. Deshpande, Jitendra K. Mahale, D.A. Mahajan

Judgement

1. By this revision, the applicants are challenging the order passed by 3rd Joint Civil Judge, Senior Division, Nagpur on 14.09.2016 in M.J.C. No.279/2011, thereby rejecting the application filed by the applicant for grant of heirship certificate.

2. Brief facts of the revision can be stated as follows: 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 widow 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 nonapplicant No.1 Parag and nonapplicant 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 has executed a Will in favour of her son on 01.10.2003, which was registered on 15.10.2003 before

SubRegistrar, Nagpur, bequeathing her property and share in favour of her son applicant No.1Baban. On the basis of this willdeed 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 and which was succeeded by Nanibai and as Nanibai has bequeathed the same to applicant No.1Baban. It was also contended that as Laxman had died issueless, his share in the property is also devolved upon the applicants and hence they are entitled to manage the whole of the property, left behind by Eknath.

4. On this application filed by the applicants, the citation was published on 17.02.2012 in daily "Tarun Bharat" Akola vide Exh.12. Within the stipulated period of one month from the publication of citation, no objections were received. However, six months thereafter, on 06.10.2012 the nonapplicants herein raised objection by filing detailed reply vide Exh.28.

5. Therefore to prove their claim for heirship certificate to the property left behind by Eknath and then by Nanibai, applicant No.1 examined himself and lead the evidence of the attesting witness Shridhar Paunikar and the scribe to the Will, namely Advocate Ram Bhide. Accordingly the Will of Nanibai was proved vide Exh.66. Applicants then also relied upon the pursis, which was filed by nonapplicants in another proceeding between the parties, in which they have had admitted the execution and contents of the Will of Nanibai and stated that they have 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 nonapplicant No.1Parag and nonapplicant No.2Sharad on 08.03.2005 vide Exh.58 and 59 in R.C.S. No.12/1992. It was thus contended by applicants before the Trial Court that they are now entitled to get the heirship certificate, on the basis of the Will executed by Nanibai and in view of the pursis filed by nonapplicants admitting the execution and contents of the said Will and relinquishing their right in the properties.

6. The grievance of the applicants is that despite this documentary and oral evidence produced on record by the applicants, the learned Trial Court has rejected their application for grant of heirship certificate on the basis of the false affidavit filed by nonapplicant No.2Sharad claiming ownership right in the property on the basis of the alleged willdeed executed by Laxman. It is therefore, submitted that the learned trial Court has not properly considered the provisions of the Bombay Regulation Act, and also the provisions of Hindu Succession Act. It is submitted that the applicants being sons and daughters of Nanibai and hence ClassII heirs are entitled to get share in the property left behind by Nanibai than the nonapplicants who are the grandsons of the Nanibai. It is further submitted that though the Will executed by Nanibai was properly proved by the applicants by examining the attesting witness and the scribe, even then learned Trial Court has rejected them the heirship certificate simply on the ground that the disputes between the parties relating to the properties are pending in different Courts and

further on the ground that the properties are not situate within its territorial jurisdiction.

7. According to the learned counsel for the applicants, as the grant of heirship certificate does not decide the rights and liabilities of the parties and strict proof of the ownership and title is necessary for the same, it was totally incorrect on the part of the Trial Court to reject the heirship certificate to the applicants, merely because some disputes are pending in other Courts. Further, it is submitted that the grant of heirship certificate is merely for management of the property and the proceedings in other Courts may take their own time to decide the rights and liability of the parties. Merely because such disputes were pending, therefore, it was not proper on the part of the Trial Court to reject the application. As regards the territorial jurisdiction, it is submitted that the Will was executed by Nanibai at Nagpur and it was also registered with SubRegistrar at Nagpur. Hence, the Trial Court had jurisdiction to decide application. According to learned counsel for applicants, this finding of the Trial Court also needs to be quashed and set aside.

8. Per contra, learned counsel for nonapplicant Nos.1 and 2 has supported the impugned order, by submitting that, when the issues raised between the parties are of complex and difficult nature and they were also pending for adjudication in other proceedings between the parties, the Trial Court was justified in rejecting the application filed by the applicant for grant of heirship certificate. Secondly, it is submitted that as the property for which heirship certificate was sought is situated at Alampur, Tah. Nandura, District Buldhana, the Trial Court has rightly held that it has no territorial jurisdiction to grant heirship certificate. According to learned counsel for nonapplicants, therefore, no fault can be found in the impugned order of the Trial Court and hence, this Court should restrain itself from interfering in the said order within the limited scope of revisional jurisdiction.

9. In view of the facts of the case and rival submissions advanced by the learned counsel for both the parties, as this revision application necessarily raises an issue relating to the interpretation of the provisions of Bombay Regulation VIII of 1827, which deals with the grant of heirship certificate, the relevant provisions in the said regulations are required to be considered for appreciating the controversy raised in this revision. The preamble of the said Regulation provides that Regulation was enacted to provide for the formal recognition of heirs, executors and administrators, and for the appointment of administrators and managers of property by the Courts. It is further stated therein as follows:

WHEREAS, at the same time that it is in general desirable that the heirs, executors or legal administrators of persons deceased should, unless their right is disputed, be allowed to assume the management or sue for the recovery for property belonging to the estate, without the interference of Courts of justice, it is yet in some cases necessary or convenient that such heirs, executors or administrators, in order to give confidence to persons in possession of, or

indebted to, the estate to acknowledge and deal with them, should obtain a certificate of heirship, executorship, or administratorship, from the Zila Court.

10. Chapter-I then lays down the rules for the recognition of Heirs, Executors and Administrators, when there is a competent claimant. Rules 1 to 8 are relevant for the purpose of deciding this revision. For ready reference they are reproduced as under:

1. Legal heir, etc., of person deceased competent to represent him without recognition from court :

Whenever a person dies leaving property, whether moveable or immovable, the heir or executor, or legal administrator, may assume the management, or sue for the recovery, of the property, in conformity with the law or usage applicable to the disposal of the said property, without making any previous application to the Court to be formally recognized.

2. First: But if such recognition requested, proclamation will be issued :

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 proof of the right of the applicant, and, if satisfied, grant him a certificate of heirship, executorship or administratorship.

Second. Publication of proclamation :

[Rep. Act. XII of 1873.]

3. If no objection appears, recognition to be granted :

If, at the expiration of the time mentioned in the proclamation, no sufficient objection has been made, the Court shall forthwith receive such proof as may be offered of the right of the person making the claim, and, if satisfied, shall grant a certificate in the form contained in Appendix B, declaring him the recognized heir, executor or administrator of the deceased.

4. First: Objection appearing to be examined and recognition given or refused accordingly :

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.

5. Authenticity of wills and recognitions how certified :

Whenever an executor is formally recognised, under the rule contained in section 4, the authenticity of the will, if any, by which he is appointed, shall be proved, and the certificate of executorship shall be endorsed thereon.

6. Wills and recognitions to be registered :

[Rep. Act XII of 1873.]

7. First: Recognized heirs, etc., competent to manage property:

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

Third: No relief from responsibility to claimants :

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 has been granted.

8. Refusal of a recognition no judgment against claim of applicant :

The 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.

11. Even a cursory glance to these rules is more than sufficient to show that the grant of heirship certificate is only a formal recognition of the heir for the purpose of management of the property left behind by the deceased. Heirship certificate does not confer any right or liability on the person in whose favour it is granted. It only indicates the person who for the time being is in the local management of the property. Clause 2 of Rule 7 is very clear to the effect that the granting of such certificate shall not finally determine nor injure the rights of

any person and such certificate shall be annulled by the District Court upon proof that another person has a preferable right. The fact that heirship certificate confers no right to the property being legal recognized in Rule 7 clause (2), Rule 8 further provides that refusal of a certificate by the Judge shall not finally determine the rights of the person whose application is refused, but he shall still be competent to institute the suit for the purpose of establishing his claim.

12. These rules in the Bombay Regulation VIII came for interpretation in two decisions of this Court, first in the case of Aloysius Manuel Dsouza & ors. vs. Mary Kamala William Manuel Dsouza 2006 (6) Bom.C.R. 556. In this case the issuance of heirship certificate granted in favour of respondent No.1 was challenged in appeal and having regard to the provisions of the Bombay Regulation VIII of 1982, it was held in para 9 that, the grant of heirship certificate does not establish the right of such party in the property of the deceased by itself. In this view of the matter, the rights of the appellants, if any, in the property of the deceased are not taken away by grant of heirship certificate to the respondent No.1. On the other hand, clause (7) further makes it clear that such heirship certificate holder is accountable to all persons having an interest in the property for the acts so done by him or her. In the backdrop of this legal position, it was held that based on the heirship certificate simplicitor, the respondent No.1 cannot be said to have acquired any right or title in the estate of the deceased. Accordingly in para 12 of the judgment it was held that appellants need to prosecute their legal remedy for determination of their rights in the estate/property of the said deceased in appropriate legal proceeding. The appeal was therefore, dismissed.

13. In another decision of this Court in the case of Ganpati Vinayak Achwal 2014(6) Mh.L.J. 683, also, it was reasserted that heirship certificate does not bestow the status of an heir upon a person. Grant of such a certificate is only a formal recognition of his existing status as an heir. The grant of such certificate is only for the convenience of the heir.

14. In the third decision of this Court in the case of Vilas Sadanand Sapre and others vs. The Civil Judge, Senior Division, Amravati in Writ Petition No.302/2011 decided on 16.03.2011, it was held that while considering such application for heirship certificate, the Court is not required to determine the title of the deceased or of the person claiming the legal heir certificate for any property and the Court is only required to consider whether the person claiming the legal heirship certificate is the heir of the deceased or not.

15. Thus, the essential aspects, which the Court has to bear in mind while determining the application for heirship certificate is whether the person/s claiming the legal heirship certificate is/are the heirs of the deceased. Another aspect, which is also required to be considered is that the grant of heirship certificate does not create any title to the property, as such title can be established only in appropriate proceeding. As a corollary thereto it follows that just as the grant of heirship certificate cannot be subject of challenge in the

appeal or revision, Similarly the refusal of such certificate also cannot be subjectmatter of the appeal or the revision. As a matter of fact, on the basis of Rule 8 of the Bombay Regulation Act, that refusal of 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, it was held in the above said decision of the Division Bench of this Court in the case of Aloysius Manuel Dsouza & ors. vs. Mary Kamala William Manuel Dsouza & ors. that if the remedy of establishing the title to the property is necessarily available by filing a suit in case of refusal, that remedy is available even when the certificate is granted and accordingly the appeal against grant of heirship certificate was dismissed.

16. Herein the case the revision is preferred against the refusal of heirship certificate by the Trial Court. Therefore, it automatically follows that in view of Rule 8 of the Bombay Regulations VIII such revision can not be maintainable at all and needs to be dismissed as adequate remedy is still available to the petitioner to establish his right by instituting the suit and in this matter already the suit is also pending in the Court. If there is no final determination of the rights of the parties in the proceeding for grant of heirship certificate, the refusal of such certificate by the Trial Court need not be the subjectmatter of the revision as the rights and liabilities of the parties are not decided finally. Therefore, the maintenance of such revision against the order passed by the Trial Court itself is in question.

17. Even assuming that this revision is maintainable, even then in the revisional jurisdiction this Court can only consider the legality, propriety and validity of the order passed by the Court and this Court cannot reappraise the evidence or substitute its own opinion. Hence, this Court has to only to consider whether the discretion exercised by the Trial Court, while refusing such heirship certificate to the judicial on arbitrary?

18. In this respect, the factual matrix of the case, which is depicted above, is more than clear to show that there are serious disputes pending between the parties, on the issue as to whether the applicants are the heirs, in the strict sense of the terms, so as to inherit the right of either the Nanibai or that of deceased Eknath, in the properties left behind by them? If one has even a cursory glance to the tree of genealogy, given in this case it can be seen that both the applicants and nonapplicants are the legal heirs of the deceased Nanibai and also of deceased Eknath. It is pertinent to note that the applicants are claiming the property on the basis of willdeed executed by Nanibai and also on the basis that they are the ClassII heirs and therefore, they will take the property to the exclusion of nonapplicants as they are not the ClassII heirs, being grandsons of the Nanibai and Ekanth. In my considered opinion these issues, cannot be the subjectmatter of the proceeding for heirship certificate, but they can be and they are disputed issues agitated by the parties in the suit and other proceedings pending between them. It is a matter of record that on the

similar facts R.C.S. No.312/2011 was filed by the applicants and the said suit was dismissed by order dated 09.01.2012. It is also a matter of record that the nonapplicants have challenged the Will alleged to be executed by Nanibai, by filing R.C.S. No.105/2011 against the applicant No.1 and that suit is pending in the Court of Civil Judge, Junior Division, Nandura.

19. Though learned counsel for the applicants has tried to rely upon the two pursis filed by nonapplicant Nos.1 and 2 in R.C.S. No.41/1997, which was renumbered 12/1997, in which they have admitted the execution of the Will, but the fact remains that nonapplicants have also filed an application for grant of heirship certificate vide M.J.C. No.29/1992 in the Court of Civil Judge, Junior Division at Telhara, District Akola and it is pending between the parties. Hence, whether applicants can claim to be the heirs of deceased Nanibai in the strict sense of the terms to inherit her property totally or to manage her property is itself in question. The very fact that such disputes are pending in the Court is sufficient to indicate that the issues involved in the present case are complicated and of difficult nature. They pertain to the interpretation of the provisions of Hindu Succession Act and deciding validity of the Will alleged to be executed by Nanibai. The second clause of Rule 4 specifically provides that if from the evidence adduced, it appears that the question at issue between the parties is of a complicated or difficult nature, then 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. Here the provisions of the Hindu Succession Act, coupled with the legality and validity of the Will alleged to be executed by Nanibai being in question, the proceeding for heirship certificate, as laid down in clause (2) of Rule 4 need not be decided. As these proceeding are to be of summary in nature and in such summary proceeding the Court can not be expected to deal with these complicated factual and legal issues raised by the parties. The Court can in such situation, leave the parties to agitate their rights before the appropriate forum, especially when in this case the litigation is pending between the parties, the learned Trial Court was also justified in holding that, in order to consider the applicants as legal heirs of the deceased Nanibai, there must be some prima facie evidence like entries in the record of rights, so that for management of the property such heirship certificate can be issued in the name of applicants. However, no document was produced by applicants on record for the Trial Court to prima facie come to the conclusion that applicants are in the management of the property and hence are entitled for management of property.

20. Rule 3 of Bombay Regulations also provide that the Court can issue such heirship certificate upon the proof as may be offered of the right of the person making the claim and only the Court, if satisfied, shall grant certificate declaring him to be the recognized heir. Herein the case from the evidence, which was adduced by the applicants and having regard to the disputes between the parties in the Civil Court, no fault can be found if the Trial Court was not satisfied of the proof offered by the applicants of their right to claim, in the property left behind

by Nanibai.

21. The rights of beneficiary under the Will are required to be crystallized in the civil suits, which are pending between the parties. The applicants, merely on the basis of such willdeed cannot exclude the rights of nonapplicants who are also the legal heirs of Nanibai and Eknath. Hence, looked at it any angle, it cannot be said that the Trial Court has committed any error, much less any illegality, impropriety or perversity, in refusing the grant of the heirship certificate to the applicants. Whether the applicants are really legal heirs, to the exclusion of nonapplicants, cannot be decided in summary proceeding. The mandate of the Bombay Regulations also is to that effect and is found reflected in its rules, especially Rule 4 and Rule 8. Therefore, the impugned order passed by the Trial Court being just, legal and correct does not call for any interference.

22. 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 Code of Civil Procedure are very material to that effect, which are reproduced here under: 16. Suits to be instituted where subjectmatter situate.- 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 of any other right to or interest in immovable property,
- (e) for compensation for 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 situate:

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, or personally works for gain.

Thus as per this section, even for the determination 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.

23. As regards the two authorities has relied upon by learned counsel for applicants that of (i) *Adcon Electronics Pvt. Ltd. v. Daulat* and another AIR 2001 SC 3712 and (ii) *Mrs. Bhawna Seth v. DLF Universal Limited* and Anr. AIR 2007 Delhi 189, it must be stated that those authorities pertain to the suit simplicitor for specific performance of contract of sale of immovable property in which no decree for possession of land was claimed and hence, it was held that the suit cannot be treated as suit for land within the meaning of clause (12) of Letters Patents and in the authority of Delhi High Court was held that suit can be instituted within the local limits of the Court having jurisdiction, where defendant carries on business and has its registered office.

24. Herein in the case, even if it is accepted that the applicants are not claiming possession of the property or have not filed the suit for recovery of possession, the fact remains that they have filed application for determination of their right or interest in the immovable property, which is situate in a different District, outside the jurisdiction of the Trial Court therefore, the present case squarely falls under Section 16 of the Code of Civil Procedure.

25. Apart from that, if one considers, even the provisions of Bombay Regulations VIII, which deal not only with the grant of the heirship certificate, but also about the appointment of Administrator and Manager of the property by the Court, lay down in Rule 10, that "whenever any person dies intestate, and without known heirs, leaving property, the Judge, within whose jurisdiction the property is, shall appoint an administrator for the management thereof." Therefore, if in case of the appointment of an administrator to the property, the Competent Court is that Court within whose jurisdiction the property is situate, it follows that even in respect of grant of heirship certificate, the Competent Court is that Court within whose jurisdiction the property in respect of which the heirship certificate is claimed, is situate. Herein the case it becomes all the more necessary to hold so because not only the property is situate in District Buldhana, but even the litigation relating to this property is also pending in the Court at Nandura, District Buldhana. The application for heirship certificate filed by non-applicants bearing M.J.C. No.29/2012 is pending in the Court at Telhara. It is thus clear that for giving go bye to those proceedings, the applicants have found this ingenious way of filing the application for grant of heirship certificate in the Court at Nagpur. The very fact that under the said certificate the applicants are claiming their right as heir to administer the property, which is situate in District Buldhana, makes it necessary, in view of the provisions of Section 16 (d) of the Code of Civil Procedure, that such application should be filed in the Court within whose local

jurisdiction property is situate and where other litigation is also pending.

26. Thus to sum up, having regard to both these factual and legal aspects of the case, it has to be held that the Trial Court has not committed any error in dismissing the application of the applicants. The legal remedy is still available to the applicants to establish their rights to the property in the pending proceedings or by filing a appropriate proceedings. However, refusal of such grant of certificate, in the facts of the present case, need not be and cannot be interfered with. The revision therefore, holds no merit. Hence, stands dismissed, with no order as to costs.