

(2001) 02 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 4961 of 1993

Babasaheb Yeshwant Anandrao Patil

APPELLANT

Vs

Smt. Manjulabai Balwant Gaikwad

RESPONDENT

Date of Decision : 08-02-2001

Acts Referred:

Constitution of India, 1950 — Article 227
Succession Act, 1925 — Section 213, 283

Citation : (2001) 2 ALLMR 574 : (2001) 3 BomCR 245 : (2001) 2 BOMLR 417 :
(2001) 2 MhLj 945

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : Mr. S.M. Paranjape, for the Appellant; Mr. T.S. Ingle, for the Respondent

Judgement

A.M. Khanwilkar, J.—This petition, under Article 227 of the Constitution, takes exception to the order passed by the 4th Joint Civil Judge, S. D. Kolhapur dated 4.11.1993 below Ex. 67 in Misc. Civ. Appln. No. 217 of 1986.

2. The said application was moved by the respondent No. 1 herein, Sow. Vimal Babasab Killedar, being legal heir and representative of Smt. Manjulabai w/o Balwant Gaikwad, for impleading her in the main petition (Ex.1) as the legal heir of the opponent No. 1 therein, viz. deceased Manjulabai Balwant Gaikwad, who had expired during the pendency of the main proceedings. The main proceedings, are stated to be still pending before the Civil Judge, S.D., Kolhapur, being M.C.A. No. 217 of 1986, Instituted by the present petitioner, claiming for probate u/s 276 of the Indian Succession Act, being the legatee under the Will dated 23.10.1985 executed by Nanibai the second wife of deceased Balwant Gaikwad. The main petition was contested by Manjulabai, the first wife of Balwant Gaikwad. However, as aforesaid, Manjulabai died during the pendency of the main proceedings. The respondent No. 1 herein Vimal Babasab Killedar asserts that she has been made legatee under the Will executed by the deceased Manjulabai dated 16.8.1991. The respondent No. 1. therefore, applied for

impleadment in the main proceedings as heir and legal representative of deceased Manjulabai. The said, application was allowed by the Court below by the Impugned order dated 4.11.1993.

3. By the present petition, Mr. Paranjape appearing for the petitioner contends that the order under challenge totally overlooks the mandate of provisions contained in section 283 of the Indian Succession Act, 1925. He submits that the said provision postulates that only the person interested in the estate of the deceased would be entitled to contest the proceedings and none else. Reliance is placed on section 283(l)(c) of the said Act to buttress this submission. Learned counsel for the contesting respondent No. 1 on the other hand strenuously contends that: since deceased Manjulabai, Impleaded as opponent No. 1 in the main proceeding had expired, but having executed Will in favour of respondent No. 1 that entitled the respondent No. 1 to contest the proceedings, as she had stepped into the shoes of Manjulabai as legal representative of the deceased Manjulabai and can be said to have interest in the estate of the deceased.

4. On considering the rival submissions and the relevant provisions of the Indian Succession Act, it is not possible to accept the stand taken by the respondent that the respondent No. 1 was entitled to pursue the proceedings on behalf of Manjulabai. As observed earlier, section 283(1)(c) mandates that citation can be issued calling upon all such persons who claim to have any Interest in the estate of the deceased to participate in the proceedings before the grant of probate or letters of administration. Therefore, no other person except the person who has interest in the estate of the deceased would be necessary party to the said proceedings or entitled, for being impleaded in the said proceedings.

5. For deciding this petition it would not be essential to go into the question as to whether deceased Manjulabai can be said to be person interested In the estate of the deceased Nanibai and resultantly the respondent No. 1 herein as she claims through Manjulabai. I would prefer to keep this question open to be addressed at an appropriate stage. Insofar as the respondent No. 1 is concerned, undoubtedly, the respondent No. 1 is claiming on the basis of the Will executed by Manjulabai dated 16.8.1991. However, there is nothing on record to indicate that respondent No. 1 has obtained letters of administration so as to claim that she has derived right under the said Will. It would be useful to make reference to section 213 of the Act which requires that any right as an executor or legatee can be established in any Court of justice, unless Court of competent jurisdiction in India, has granted probate of Will under which the right is claimed, or has granted letters of administration. In view of section 213 read with section 283 of the Act it is not possible to accept the stand taken on behalf of respondent No. 1 that she has acquired any right, merely on the basis of the Will, unless she obtains letters of administration from a Court of competent jurisdiction. There is nothing on record to indicate that the respondent No. 1 has obtained such letters of administration. It is only after the respondent No. 1 obtains such letters of administration that she would be entitled to assert right under the Will executed

by Manjulabai and to claim that she has stepped Into the shoes of Manjulabai. In absence thereof it is not open to the respondent No. 1 to stake any claim in any manner as the heir or legal representative of Manjulabai on the basis of the alleged Will in her favour.

6. The basis on which the Court below proceeded to allow the application is totally unsustainable for the view that I have taken In this judgment. It is to be noted that the respondent No. 1 Is not claiming to be the natural heir of Manjulabai and since her claim is entirely dependent on the Will executed by Manjulabai, unless she obtains letters of administration, it is not open for the respondent No. 1 to assert any right as an executor or legatee under the said Will before any Court of justice. In the circumstances, the order passed by the Court below deserves to be set aside as the same is contrary to the aforesaid legal position.

7. For the aforesaid reasons this petition succeeds. The impugned order dated 4.11.1993 passed by the 4th Joint Civil Judge, S.D., Kolhapur below Ex. 67 in Misc. Civ. Appln. No. 217 of 1986 is set aside. Rule is made absolute In the above terms. No order as to costs. Parties to act on authenticated copy of order.