
(2019) 02 BOM CK 0060
In the Bombay High Court
Case No : Writ Petition No. 5447 Of 2018

Parvatabai @ Beby And Ors

APPELLANT

Vs

Surekha @ Rekha

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Indian Succession Act, 1925 — Section 383, 384, 385, 387, 390

Citation : (2019) 02 BOM CK 0060

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : Sahil S. Dewani, Nitin D. Sonare

Final Decision : Allowed

Judgement

Manish Pitale, J

1. Heard.
2. Rule. Rule made returnable forthwith. The writ petition is heard finally with the consent of the learned counsel for the parties.
3. By this writ petition, the petitioner has challenged order dated 18/06/2018 passed by the Court of 11th Joint Civil Judge Senior Division, Nagpur (Trial Court) in M.J.C. No.192 of 2017, whereby application filed by the petitioners below Exhibit- 18 for dismissal of the proceedings initiated by the respondent herein, was rejected.
4. The facts leading to filing of the present writ petition are that the petitioners had filed an application for grant of legal heirship certificate under Bombay Regulation VIII of 1827 (hereinafter referred to "Regulation"). The said application was granted by the Court of Civil Judge, Junior Division, Nagpur by judgment and order dated 13/06/2017. An application was filed by the respondent on 02/03/2017 under the very same Regulation for grant of legal heirship certificate wherein the petitioners were made parties as non-applicants.

The respondent specifically described certain properties in the said application and a declaration was sought to the effect that the respondent was legal heir of deceased Parasram Fakira More. It is not in dispute that the legal heirship certificate already granted in favour of the petitioners also pertained to the said deceased Parasram Fakira More.

5. The petitioners appeared in the said subsequent proceedings initiated by the respondent and filed an application for dismissal of the proceedings, which was marked as Exhibit-18. It was contended in the said application on behalf of the petitioners that since they had been granted legal heirship certificate by order dated 13/06/2017 passed by the Court of Joint Civil Judge Junior Division, Nagpur, the application filed by the respondent was not maintainable. By impugned order dated 18/06/2018, the Trial Court in the present case had rejected the said application holding that there was a possibility that the petitioners had obtained the legal heirship certificate in their favour by suppressing material facts.

6. The said order has been challenged in the present writ petition wherein Mr. Sahil Dewani, learned counsel appearing for the petitioners contended that the subsequent application filed by the respondent was not maintainable under the aforesaid Regulation as also under the provisions of the Indian Succession Act, 1925 (hereinafter referred to as "Act of 1925"). It was pointed out that in the Act of 1925, particularly as per section 390 thereof, the certificate issued under the aforesaid Regulation would be subject to the provisions of the Act of 1925 and on this basis, it was submitted that the respondent ought to have either invoked the relevant provision of the aforesaid Regulation or the Act of 1925, in order to seek revocation of the certificate granted in favour of the petitioners. It was submitted that in the absence of seeking revocation of the certificate already granted in favour of petitioners, the application filed by the respondent under the provisions of the said Regulation was not maintainable. It was submitted that section 383 of the Act of 1925 provides for revocation of certificate while clause 7 (second) of the said Regulation provides for annulment of the certificate granted in favour of the respondent and that having failed to approach the Competent Court under either of the provisions, the respondent could not have filed the said application for grant of legal heirship certificate. The learned counsel also referred to section 387 of the Act of 1925 to contend that the legal heirship certificate granted in favour of the petitioners could certainly be challenged by the respondent by instituting appropriate proceedings before the Civil Court. In these circumstances, according to the learned counsel, the Trial Court erred in rejecting the application at Exhibit-18. Learned counsel placed reliance on judgment of this Court in the case of *Bainabai v. Divisional Manager, Life Insurance Corporation of India and others*, 2018 (6) Mh.L.J. 91 and *Kusum Chandrakant Shankardas and others v. Rajeshri Chandrakant Shankardas and others*, 2018 (1) Mh.L.J. 681.

7. On the other hand, Mr. Nitin Sonare, learned counsel appearing for the respondent, submitted that the impugned order did not deserve any interference

because it was correctly held that subsequent application filed by the respondent was indeed maintainable. It was submitted that when the application was filed by the respondent, he was not aware about grant of legal heirship certificate in favour of petitioners and that in any case, such certificate had been obtained by suppression of material facts by the petitioners. It was submitted that on a proper reading of section 387 of the Act of 1925, it would be evident that when the words "any other proceedings" were used in the said provision, it included an application in the nature filed by the respondent under the aforesaid Regulation for grant of legal heirship certificate. It was further submitted that in such an application the Court could certainly go into the question of validity of grant of legal heirship certificate in favour of petitioners. The learned counsel relied upon judgment of this Court in the case of *Manda R. Pande v. Smt. Jankibai S. Dubey*, 2006 (2) Mh.L.J., 162.

8. Heard learned counsel for the parties and perused record. The short question that arises for consideration in the present writ petition is, as to whether the application filed by the respondent under the aforesaid Regulation for grant of legal heirship certificate was maintainable, in the light of such a certificate granted in favour of the petitioners by judgment and order dated 13/06/2017 passed by the Court of Civil Judge, Senior Division, Nagpur. It has come on record that when the petitioners applied for grant of certificate under the said Regulation, they did not show any person as a non-applicant. In this situation, as contemplated under the law, notice inviting objections was published in a newspaper and the said Court proceeded to decide the application filed by the petitioners. By the said order dated 13/06/2017, the Court of Civil Judge, Junior Division, Nagpur, granted legal heirship certificate in favour of petitioners and it has come on record that there was no objector to grant of such certificate.

9. The respondent filed the aforesaid application before the Trial Court i.e. Court of Civil Judge, Senior Division, Nagpur, under the said Regulation claiming that he was entitled to grant legal heirship certificate wherein he indeed joined the petitioners as non-applicants. It is the case of the respondent that since he was not aware of grant of legal heirship certificate in favour of the petitioners, she did not make any mention of the same and that, in any case according to her, she was the only person entitled to be declared as legal heir of deceased Parasram More. The question is whether in such an application filed under the aforesaid Regulation for grant of legal heirship certificate, the respondent could claim that by implication, it had to be inferred that she was challenging the legal heirship certificate granted to the petitioners. According to the learned counsel appearing for the respondent, such an application was maintainable under section 387 of the Act of 1925 because apart from the word "suit", the words "any other proceedings" were used in the said provision. According to the learned counsel, the application so filed on behalf of the respondent was included under the said expression and that such an application was to be treated as an application under Part X of the said Act, pertaining to succession certificate and there was no question of the application being rejected as being not maintainable.

10. In this context, certain provisions of the aforesaid Act of 1925 and the Regulation are relevant. The said provisions read as follows:-

"383. Revocation of certificate.- A certificate granted under this Part may be revoked for any of the following causes, namely:--

(a) that the proceedings to obtain the certificate were defective in substance;

(b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;

(c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;

(d) that the certificate has become useless and inoperative through circumstances;

(e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

384. Appeal.- (1) Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Judge, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908. (5 of 1908).

(3) Subject to the provisions of sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908, (5 of 1908), as applied by section 141 of that Code, an order of a District Judge under this Part shall be final.

385. Effect on certificate of previous certificate, probate or letters of administration.- Save as provided by this Act, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.

387. Effect of decisions under this Act, and liability of holder of certificate thereunder.- No decision under this Part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Part shall be construed to affect the liability of any person who may receive the whole or any

part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

390. Provisions with respect to certificates under Bombay Regulation III 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 that 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."

The relevant provisions of the Regulation are as follows :-

"7. First.- An heir, executor or Recognized administrator, holding the proper certificate, heirs, etc. may do all acts and grant all deeds competent to to a legal heir, executor or administrator, and manage may sue and obtain judgment in any Court in property.

that capacity.

Second. - But, as the certificate confers no right But to the property, but only indicates the person recognition who, for the time being, is in the legal gives no title management thereof, the granting of such to property.

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.- An heir, executor or administrator, Not relief holding a certificate, shall be accountable for his acts done in that capacity to all persons from having an interest in the property, in the same responsibility manner as if no certificate had been granted. to claimants.

8. The refusal of a certificate by the Refusal of Judge shall not finally determine the rights of recognition the persons whose application is refused, but it no judgment shall still be competent to him to institute a suit against claim for the purpose of establishing his claim." of applicant.

11. A perusal of the above quoted provisions shows that section 387 of the Act of 1925 and clause 7 second of the said Regulation specifically provide for revocation and annulment of a certificate in the nature granted in favour of the petitioners herein. Section 385 of the Act of 1925 specifically provides that a certificate granted in favour of a person shall be invalid if there has been a previous grant of such a certificate and when such a previous grant is in force. Section 387 of the Act of 1925 provides that no decision in Part X of the said Act would prevent the question involved to be raised in a suit or "any other

proceedings between the same parties". A proper reading of the aforesaid provision clearly shows that there is a scheme provided for revocation or annulment of certificate, with which any person is aggrieved and that there is also the option of approaching the Civil Court by filing a suit or any other proceedings and that grant of earlier certificate would not act as res judicata between the parties. In the present case, even if the respondent was not aware about grant of heirship certificate in favour of the petitioners, the moment the grant of certificate in favour of the petitioners was brought to her notice, the only course available for her was to have taken appropriate steps either for revocation of the certificate under section 383 of the said Act or for annulment of the said certificate under clause 7 second of the said Regulation or to have filed a suit as contemplated under section 387 of the Act of 1925. To proceed with the present application, filed by the respondent, which is only for grant of legal heirship certificate to her would be an exercise in futility, in view of section 385 of the said Act. This becomes further clear by a perusal of the prayer clause of the application filed by the respondent, which reads as follows :

"PRAYER : It is therefore humbly prayed that this Hon'ble Court please to:

- i) To allowed this applicant.
- ii) To declare the applicant are Legal Heir of the deceased Parasram Fakira More and issue the legal heir Certificate in favour of the applicant so as to submit the Revenue Authority for necessary mutation.
- iii) Any other relief as this hon'ble court deems fit and proper under the circumstance be granted in the interest of justice."

12. As long as the certificate granted in favour of the petitioners continues in force, the entire exercise sought to be undertaken by the Trial Court at the behest of the respondent would result in an invalid certificate. This cannot be contemplated in law. Therefore, the correct remedy for the respondent in the facts and circumstances of the present case, was to have moved an application either for revocation or annulment of the legal heirship certificate granted in favour of the petitioners, which admittedly still continues to be in force.

13. A contention has been raised on behalf of the respondent that the application filed by her would be maintainable under section 387 of the said Act, since the words "any other proceedings" have been used therein. The said contention is raised in ignorance of the entire scheme contemplated under Part X of the aforesaid Act and the significance of the words "between the same parties" used in the aforesaid provisions. The use of the words "any other proceedings between the same parties" emphasizes that even if an heirship/succession certificate is granted after contest between the same parties under Part X of the said Act, it would still not operate as res judicata if a suit or any other proceeding is instituted by a person aggrieved. A proper reading of the said provision would demonstrate that either of the aggrieved party could file a suit for raising grievance against grant of heirship/succession certificate or such a party could

institute proceedings either for revocation or annulment of grant of certificate in favour of the other party. An application for either revocation or annulment of the grant of certificate in favour of the other party could not be thrown out merely because such a certificate had been already granted, even when the same parties contested such a proceeding. In fact, section 383 of the said Act provides for specific grounds on which revocation can be sought.

14. Therefore, the contentions raised on behalf of the respondent that the application filed in the present case by the respondent was maintainable under section 387 of the said Act is not sustainable. The learned counsel appearing for the respondent also referred to section 384 of the said Act, which pertains to appeal and he submitted that an appeal would lie even against an order refusing or revoking a certificate under this act and on that basis, contended that as long as the respondent in the present case could demonstrate that the petitioners had obtained certificate in their favour by suppressing material facts, an application in the nature filed by the respondent was clearly maintainable. The said contention is also without any substance, because section 384 of the Act is concerned only with the aspect of filing of an appeal by a person aggrieved when either the grant of certificate is refused or it is revoked under Part X of the aforesaid Act. In the present case, there is no question of the Court going into the issue of either granting or refusing legal heirs/succession certificate to the respondent, in the face of legal heirship certificate already granted to the petitioners, which is admittedly in force even today. Therefore, the only remedy available to the respondent would be either to file a suit under section 387 or an application for revocation under section 383 of the Act of 1925 or an application for annulment of the certificate under clause 7 second of the said Regulation. The remedy of filing appropriate suit before the Civil Court is of course available to the aggrieved party in such facts and circumstances.

15. Therefore, it is evident that the impugned order passed in the present case was not based on proper appreciation of the relevant provisions of law. Insofar as the judgment relied upon by the learned counsel for the respondent in the case of *Manda R. Pande v. Smt. Jankibai S. Dubey* (supra) is concerned, a perusal of the said case shows that a suit for declaration had been filed in respect of succession certificate with which the plaintiff was aggrieved. There is no quarrel with the proposition that under section 387 of the Act of 1925, an aggrieved party can certainly file a suit claiming aforesaid relief. Therefore, the said judgment would not be helpful to the case of the respondent. As regards the judgments relied upon by the learned counsel appearing for the petitioners, the said judgments reiterate the scheme envisaged in Part X of the aforesaid Act, which is also evident from a bare reading of the provisions contained in the said Part. Therefore, specific reference to the said judgments would not be necessary. This Court finds that the impugned order by the Court below is unsustainable.

16. Accordingly, the impugned order is quashed and set aside and the present writ petition is allowed. Consequently, the application below Exhibit-18 filed by

the petitioner is allowed and the proceeding initiated by the respondent i.e. M.J.C. No.192 of 2017 before the Court below stands dismissed. It is made clear that the respondent would be at liberty to initiate appropriate proceedings under section 383 of the Act of 1925 for revocation of certificate granted in favour of the petitioners or for annulment of the certificate under clause 7 second of the Regulation or to file appropriate suit under section 387 of the Act of 1925 before the Competent Civil Court.

17. Rule is made absolute in the above terms. No costs.