

(1999) 04 BOM CK 0071

In the Bombay High Court

Case No : Petition No. 280 of 1998 along with Petition (lodging) No's. 222 and 88 of 1999

Vidya Shivajirao Patil and others

Date of Decision : 28-04-1999

Acts Referred:

Succession Act, 1925 — Section 246

Citation : (1999) 2 ALLMR 615 : (1999) 3 BomCR 787 : (1999) 2 MhLj 643

Hon'ble Judges : H.L. Gokhale, J

Bench : Single Bench

Advocate : Milind Vasudeo, N.V. Bandivadekar and M.S. D'Mello instructed by Mrs. Parul P. Kapadia, for the Appellant;

Judgement

H.L. Gokhale, J.—All these three petitions raise a common question with respect to interpretation of the State Government's Notification dated 1-10-1994. Mr. Milind Vasudeo has appeared in support of Petition No. 280 of 1998. Mr. Bandivadekar has appeared in connection with Petition (Lodging) No. 222 of 1999 and Mr. M.S. D'Mello appeared in support of Petition (Lodging) No. 88 of 1999.

2. In Petition No. 280 of 1998, the petitioner is the grand mother of a male child and the petitioner seeks Letters of Administration to the property assets and credits of late Smita Patil for the benefits of her son Pratik. The petitioner, being a lady, seeks an exemption from payment of Court fees under the concerned Government Notification. Second Petition (Lodging) No. 222 of 1999 is filed by two sons and two daughters seeking letters of administration to the property of their father who has died leaving behind only his heirs. The third Petition (Lodging) No. 88 of 1999 is filed by two brothers of one late Placid Colaso who has died leaving behind two minors, one son and one daughter.

3. In Petition No. 280 of 1998 as well as in Petition (Lodging) No. 88 of 1999, the petitioners have been appointed as Guardians by separate orders passed u/s 246 of the Indian Succession Act, 1925.

4. The Notification mentioned above dated 1-10-1994 reads as follows:-

"REVENUE AND FORESTS DEPARTMENT Mantralaya, Bombay 400 032, dated the 1st October, 1994.

Bombay Court Fees Act, 1959.

STP 1094 CR-859 M-I. Whereas the Government of Maharashtra has recently announced a policy with a view to promote the welfare of the women;

And whereas, the said welfare policy for women inter alia, provides for exemption of Court Fees for women litigants in cases relating to maintenance, property right, violence and divorce.

And whereas, section 46 of the Bombay Court Fees Act, 1959 (BOM XXXVI of 1959) empowers the State Government by notification in the Official Gazette to reduce or to remit any of the fees mentioned in the First and Second Schedules to that Act.

Now, therefore, in exercise of the powers conferred by section 16 of the Bombay Court Fees Act, 1959 (Bom. XXXVI of 1959), the Government of Maharashtra hereby remits the fees payable by women litigants on, any of the complaints, applications, petitions, Memorandum of appeals or any other documents specified in the First and Second Schedules to the said Act to be filed in any Civil, Family or Criminal Courts in respect of the cases relating to (a) maintenance, (b) property disputes, (c) violence and (d) divorce.

By Order and in the name of the Governor of Maharashtra.

HARSHAWARDHA GAJBHIYE,

Deputy Secretary to Government."

5. Mr. Vasudeo appearing in support of the Petition No. 280 of 1998 states that if a woman litigant files a proceeding, she will be entitled to benefits under that Notification. He relies upon the unreported judgment of K.G. Shah, J., as he then was, dated 26-6-1996 in Petition No. 284 of 1996. That was a case where the question raised before the Court was as to whether the Notification was intended to apply in relation to the applications or petitions for probate or petitions for Letters of Administration. The learned Judge took the view that the Notification, did not specifically refer to the applications or petitions for probate or Letters of Administration, such proceedings would be covered under that Notification. This is because, as can be seen from the last para of the Notification, the Notification grants exemption of Court fees for women litigants in cases relating to maintenance, property right, violence and divorce. Applications or petitions for Probate or Letters of Administration, being proceedings for property right, when moved by women litigants for their benefits, the proceedings would certainly be exempted from the Court fees.

6. Mr. Vasudeo submits that the judgment given by K.G. Shah, J., would squarely cover this petitioner and the petitioner should be treated as exempted from the requirement of the Court-Fees. He submits that she has been appointed as

Guardian u/s 246 of the Indian Succession Act for the purpose of proceeding in the matter and therefore she should be held as eligible for exemption of Court Fees as provided under the Notification.

7. Now, as can be seen from the Notification, it is meant to provide for exemption of Court-Fees for women litigants in cases relating to maintenance, property right, violence and divorce, meaning thereby that when the controversy before the Court involves any of these four topics, a woman litigant would be entitled for exemption of Court Fees. It is also stated in the first recital that the Notification was issued as a policy with a view to promote the welfare of the women. This being the objective behind the Notification, it is clear that it is meant to apply for controversies covering these four topics concerning women and where the women are the beneficiaries under the particular litigation. Otherwise, as can be seen in the case of Petition No. 280 of 1998 where the grand father of the concerned child is available, it is the grand mother who has filed the petition and merely because grand mother has filed the petition, although it is for the benefit of the grand-son, the petitioner would be seeking the benefits of the Notification. It is true that the benefits would go to women litigants but it has to go in those cases where they are the beneficiaries and not merely when the proceedings are initiated in their names. Any other interpretation would be fallacious. The aforesaid view taken by me is not at all in conflict with the view taken by my brother Shah, J., in the above judgment. It is the duty of the Court to see that the object of the Legislation or Notification does not suffer. But at the same time, approach of the Court should also be that the revenue should not suffer unnecessary when there is no specific case made out.

8. In the circumstances, Petition No. 280 of 1998 is concerned, the petitioner will have to pay necessary Court Fees on this petition.

As far as Petition (Lodging) No. 222 of 1999 is concerned, there are four beneficiaries, two of them are women and two of them are men and all of them have jointly filed this petition for Letters of Administration to the property and credits of the deceased. Mr. Bandivadekar is fair enough to state that the petitioner Nos. 2 and 4 who are men, should be required to pay Court Fees to the extent of the property likely to come with them. In the facts of the present case, they will be entitled to 2/4th of shares.

As far as petitioner Nos. 1 and 3 are concerned who are ladies, they would be certainly exempted from the requirement of Court fees. Hence the petitioners will pay half Court Fees on this Petition (Lodging) No. 222 of 1999.

As far as Petition (Lodging) No. 88 of 1999 is concerned, one out of the two beneficiaries are a minor girl child. Mr. D'Mello is fair enough to state that in this case also the petitioners would be required to pay half Court Fees. Accordingly on this petition, the petitioners shall pay half the Court Fees.

Certified copy of the order is expedited.

9. Order accordingly.