

Succ. C.No.1/2018.

Chhaya +3 vs. Nil.

Order below Exh. 23 in Succ. Case No. 1/2018.

CNR NO MHBUI3-000101-20018

This is an application filed by objector/applicant No.5 under Order 1 Rule X of the C.P.C. thereby praying for adding her in the array of opponent/objector.

2. Perused application, say of original applicants and documents on record. Also heard learned Advocates for the respective parties.

3. Learned Advocate for objector/applicant No.5 has submitted that original applicant Nos. 1 to 4 had applied for grant of heirship certificate under the provisions of Bombay Regulation VIII of 1827 contending that deceased Mahesh Rupareliya has expired and they are the only legal heirs left behind by him. The present objector i.e. applicant No.5 who is mother of deceased Mahesh Rupareliya had filed her objection at Exh.11 contending that she is also Class-I heir of deceased Mahesh Rupareliya and certificate be issued in her name also in addition to the names of rest of the applicants.

4. This Hon'ble court was pleased to allow the said objection and further directed to the original applicants to add this objector as applicant No.5 alongwith them. Pursuant to that direction, name of present objector was added in the array of applicants as applicant No.5. Thereafter, applicant Nos. 1 to 4 applied for amendment of original application thereby introducing the case of execution of alleged Will by

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deceased Mahesh Rupareliya in favour of applicant Nos. 1 to 4 only in relation to his properties. Since, the present objector didn't admit the execution of alleged Will in favour of applicant Nos. 1 to 4 by her son deceased Mahesh Rupareliya, she wants to resist the claim of applicants No.1 to 4 as to alleged Will and for that she wants to file detail objection to the application filed by applicant Nos. 1 to 4, which is not possible unless her name is shown in the array of objector. Hence, learned Advocate for objector has prayed for grant of this application thereby adding present objector in the array of opponent/objector.

5. On the contrary, learned Advocate for original applicant Nos. 1 to 4 has strongly opposed to this application on the ground that this application is nothing but an abuse of process of law. As per order below Exh. 11, this Hon'ble Court had directed applicant Nos. 1 to 4 to add present objector as an applicant No.5 alongwith them. Accordingly, applicants No.1 to 4 have amended their original application thereby adding this objector as applicant No.5. It is further submitted that still that order has not challenged by present objector before any Competent Forum. If this objector has any grievance in respect of alleged Will then she is at liberty to take necessary action independently. This application has been filed only to hold up this proceeding. Hence, he prayed for rejection of this application.

6. I have perused record of the matter and also considered the above submissions of learned Advocates. It is pertinent to note here that by an order dated 18/9/2018 passed below Exh.11, this objector, applicant No.5 was directed to be made as an applicant No.5 alongwith other applicants. The reason for making this objector as an applicant

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No.5 was only to recognize this objector as one of the legal heirs of deceased Mahesh Yuraj Rupareliya alongwith other applicants so that legal heirship certificate may be issued in the names of applicant Nos.1 to 4 including this objector. Certainly, order below Exh.11 has not been challenged by this objector till today. As such, that order again cannot be called in question before this court itself.

7. This objector has filed this application only because of amendment made by applicants No.1 to 4 thereby referring a Will executed by deceased Mahesh Yuraj Rupareliya. From the application, it appears that this objector/applicant No.5 is unnecessarily getting worried about the present proceeding. As such, I think that some important things are required to be mentioned here so that anxiety of this objector will be put at rest.

a) This proceeding is filed by applicants under the provisions of Bombay Regulation VIII of 1827 only for their formal recognition as legal heirs of deceased Mahesh Yuraj Rupareliya by issuing heirship certificate in their names.

b) This objector has not denied the fact that applicant Nos. 1 to 4 are not legal heirs of deceased Mahesh Yuraj Rupareliya. She has taken only objection that she has not shown as one of the legal heirs of deceased Mahesh Yuraj Rupareliya. That is why, this objector has been added as an applicant No.5 instead of adding her as an opponent/objector.

c) Present proceeding being filed under the provisions of Bombay

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Regulation VIII of 1827, this court has no jurisdiction to adjudicate upon the legality or illegality of alleged Will particularly in this proceeding. For challenging alleged Will, this objector shall have to file separate civil proceeding.

d) The grant of heirship certificate does not establish the right of any party in the property of the deceased by itself. The rights of one party in the property of deceased are not taken away by grant of heirship certificate to other party.

e) Legal heirship certificate is nothing but a formal recognition of person as a legal heir of deceased. It can be said that if the certificate is granted then it does not finally determine the rights of the person in whose favour the certificate has been granted nor does it take away the rights of other person to establish his claim in the Competent Court. It does not confer any right to the property of deceased as it is formal recognition as to legal heirship.

8) Thus, in view of above discussion, I think it just and proper to reject present application. Hence, following order is passed.

ORDER

- 1 Application is rejected.
2. No order as to costs.

sd/-

Date :- 11/03/2019.
Place :- Chikhli

(S.W.Thombre)
Civil Judge Jr. Dn.
Chikhli.

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Certificate

I affirm B.B.Theng, Stenographer (L.G.) that the contents of this PDF file Judgment/ Order are same words, as per original Judgment/Order.