



Cri. Misc. Application No. 829/2020
Vishwambhar Vs. Municipal Council

ORDER BELOW EXH.16

1. This is an objection petition filed by Ram Digambar Chidrewar @ Ram Namdeo Mukkawar, in the main application preferred by applicant Vishwambhar Govind Chidrewar, under section 13(3) of the Registration of Births and Deaths Act, 1969 (hereinafter referred to as “the Act” for the sake of brevity and convenience).
2. In brief, the case put forth by the applicant in application under section 13(3) of the Act is that, he is the son of deceased Mathurabai Govind Chidrewar. On 20.03.2015 his mother left for heavenly abode from his house located within limit of Municipal Council. According to him, his mother had been residing with him at his ancestral house property which was located within limit of municipal Council Udgir. After the demise of his mother, the applicant had been to the non-applicant and thereby requested to issue death certificate of his mother. However, as he had not informed about the death of his mother with the non-applicant, he could not get death certificate from the non-applicant. On 05.11.2020, the non-applicant has issued a non-availability certificate of death of his mother and thereby suggested him to obtain directions from the competent Court of law. It is further averred that to mutate the property which stands in the name of his father, he is indeed in need of death certificate. Hence, the instant application for the relief sought for.
3. Acting upon the above application, paper publication was directed to be issued in a daily newspaper having wide circulation in the locality and citation notice as well. Accordingly, paper publication came to

be issued in a daily newspaper “Yashwant” dated 07.12.2020 and invited the attention of public at large. Though the instant objection petitioner did not appear within stipulated period still he has subsequently filed his detailed objection on 04.03.2021 at Exh.16, to which the Court is now dealt with.

4. The case put forth by the objection petitioner in brief is that, neither Mathurabai was the wife of Govind Laxman Chidrewar nor said Govind was the father of the applicant i.e. Vishwambhar Govind Chidrewar. He has denied that Mathurabai died on 20.03.2015. He has denied the relationship put forth by the applicant as well. He has come with the case that Mathurabai had not been died in Udgir city, and therefore no question arises as to her death registration. He has denied the last residence of said Mathurabai as well.

5. It is the specific case of the objection petitioner that he is the owner in occupation of Municipal Council House No.2-1-1-22 since last more than 80 years through his forefathers and applicant is trying to show his nexus with that property. According to him, the instant applicant wants to grab the property which do not stand in the name of his father. Further he has not specifically mentioned on which property he wants to mutate his name. Thus, the instant application is vague and ambiguous and such application should be rejected at the threshold. Thus, the instant objection petition.

6. The original applicant has filed his say (Exh.17) to the objection preferred by the objection petitioner. It is the specific submission of the applicant that objection petitioner has intentionally and falsely denied the relationship of deceased with her husband as well as relationship with the instant applicant. Further, the objection petitioner has denied the date of death of deceased Mathurabai and that too without any cogent documentary evidence. Further, the objection petitioner has denied

the place of death of Mathurabai without any supportive documents. It is specifically stated by the applicant that though the objection petitioner has denied almost all the contents of the application, still it is not backed up by any evidence.

7. According to the applicant, he has fairly shown his *bona fideness* in his application as to non registration of death early. He has put forth by point of legal illiteracy and stated that legal illiteracy is a genuine reason and thus it is excusable and on this ground alone the applicant may not be discarded from his lawful rights for registration of death of his mother. It is further stated that who will suffer loss is not required to be mentioned in the application. Likewise, it is denied that the other heirs are necessarily to be impleaded in the application. Ultimately, it is submitted that the entire contents of objection petitioner being false and baseless and thus deserves to be rejected with a heavy costs of ₹10,000/-. Hence, prayed for rejection of the objection.

8. I have heard Shri. N. M. Chidrewar, learned advocate appearing for the objection petitioner whereas Shri. S. M. Mududge, learned advocate appearing for the applicant, for some time. Perused the matters before the Court. To make his objection concrete, the learned advocate for the objection petitioner has relied upon the authority of **Smt. Muniyamma and others Vs. Devegowda and others 2013 SCC OnLine Kar 5065**. This authority will be dealt with at proper stage and place of this order.

9. Following point arise for my determination, the findings thereon for the reasons therefor are as under :

Sr. No.	Points	Findings
1.	In the facts and circumstances of the instant case, whether the objection	Yes.

	petitioner has made grounds to allow him to participate in the inquiry ?	
2.	What order ?	The objection petitioner is allowed to participate in the inquiry.

REASONS

As to Point No.1 :-

10. Before advertng to the facts of the main application and objections raised by the objection petitioner, I would like to state that the language contained in section 13(3) of the Act mandates the Magistrate to pass an order after verification of the date of death. Verification involves determination or testing the truth or the accuracy of the statements made in the application. Thus, the Magistrate can not blindly pass any order, merely acting upon either the application or the objection as well.

11. To substantiate his claim, the applicant has filed his evidence affidavit at Exh.10 and testified therein in the pleaded lines. In support of his claim, he has examined Rukhman Kisanrao Pensalwar and Ashok Kerbaji Kodgire. They have also testified in consonance with the evidence of the applicant. However, none of the witnesses have deposed the exact purpose for which they want the entry of death being registered. On the point of delay, they only deposed that they do not have knowledge that the death needs to be registered. Thus, the objection preferred on this point needs to be gone through.

12. At the very outset, the learned advocate for the objection petitioner Shri. N. M. Chidrewar has argued with much vehemence that the application of the applicant is totally silent on for what purpose they wants entry in the death register, they did not make party to the other heirs

of the deceased, they have not made any particulars as to the persons who are likely to be affected by the entry in the death register and therefore the application is baseless. The objection petitioner has seriously doubted not only the date of death but also the place of death of deceased Mathurabai. To make his submissions concrete, he has relied upon the observations made by the Hon'ble High Court in the case of Smt. Muniyamma (cited supra). I have gone through this authority. In that authority the issue before the Hon'ble High Court was whether the date of death of the father of the respondent i.e. Deoria alias Devegowda was 24.02.1970 or he had died in the year 1979. Since the respondent intends to get cancelled the registered sale deeds executed by the deceased by showing his death before the execution of those sale deeds. In that case there was an occasion before the Hon'ble High Court to throw light on the provisions of section 13(3) of the Act of 1969. The Hon'ble High Court has emphasized therein that if an appropriate procedure is followed by the Magistrate, the mischief, it may cause can be prevented upto a large extent. The language contained in section 13(3) mandates the Magistrate to pass an order after verification of the date of death. Verification involves determination or testing the truth or the accuracy of the statements made in the petition. Therefore, the Magistrate, cannot blindly direct entry of date of death as sought for in the petition. In that case the Hon'ble High Court has followed the observations made by the Hon'ble Gujarat High Court in **Karimabibi Vs. Ankleshwar Municipality and others AIR 1998 Gujarat 42** and the similar observations made by the division bench of the Hon'ble Orissa High Court in **Rahimuddin Vs. Ojifa Bibi and others AIR 1989 Orissa 56**.

13. I have considered the above observations in juxtaposition with the averments made in the instant application, objection raised by the objection petitioner and documents relied upon by them. It is clear enough

on plain reading of the application made by the applicant that he has not made the other heirs of Mathurabai Govindrao Chidrewar as party to the instant application. They have only mentioned that they want death certificate for record purposes as well as transfer of his father's property in the name of all heirs. Thus, it is clear that there are other legal heirs to the deceased as well. Further, the application is totally silent on the point of delay in moving the instant application. It is expected by the law that when any application is presented under section 13(3) of the Act, after a period of one year from the date of death, it would be incumbent on the applicant to state the reasons in his application as to why the earlier entry in the death or birth register could not be made and why he could not give the information regarding the same to the competent authority. It is also expected from him that he must justify his late action in filing such an application by making necessary averments in his application. Further, it is expected from him that necessarily he has to state the purpose for which he wants the entry in the death register. Thus, I find much more substance in the arguments advanced by the learned advocate appearing for the objection petitioner.

14. Further it is made clear that as per the jurisprudential rule the authorities of other than parent High Court have only persuasive value. Though the above authority has only persuasive value since being an authority of other than parent High Court, still on that point the applicant has not tendered any authority. Furthermore, in the said authority the Hon'ble High Court has dealt with and relied upon the authority of the Hon'ble Orissa High Court, which is of the division bench, thus it needs to be relied upon. Hence, I hold that the authority of Smt. Muniyamma... (cited supra) relied upon by the objection petitioner, is squarely applicable to the instant case.

15. On this point, the learned advocate for the applicant has

strenuously argued that he has mentioned the purpose for which he wants the death entry of his father. Further he has argued that the objection petitioner should have given correct date of death of deceased Mathurabai and place as well, if he raises objection thereof. I have given my thoughtful considerations to the arguments advanced by the rival parties. Considering the above observations in juxtaposition with the arguments advanced by both sides, it is observed that though in general course the impleadment of heirs of deceased are not expected strictly, but whenever such application would challenge, it is necessary to do so. Further, as per the submissions of learned advocate for the applicant the objection petitioner should have given correct date of death. However, for that purpose he should have given opportunity to put up his case. Thus, I do not find force in the arguments advanced by the learned advocate for the applicant.

16. In the instant case the objection petitioner has come with the case that the applicant is going to mutate his name as against the immovable property. The applicant has not mentioned the any particular as to any immovable property in his application. If the objection petitioner is not given an opportunity to contest the instant application and in the event the order of the Court, it will going to create the right in favour of the applicant and obligation against certain persons. Therefore, in such circumstances, if the obligations are created against the objection petitioner, she must have reasonable opportunity to challenge the instant application. It is observed that when the objection petitioner has knocking at the doors of the Court and seriously disputing the date of death and place as well. In such circumstances, it would be just and proper to hear him and extend an opportunity to contest the instant application, before passing any final order.

17. In the backdrop of above considerations, it is observed that in

the facts and circumstances of the instant case, the objection petitioner needs to be given an opportunity to lead evidence. Hence, the objection petitioner is permitted to lead evidence. Thus, the inquiry is undertaken further. It is hereby clarified that the instant proceeding is a summary proceeding and initiated way back in the year 2020, thus it is more or less five years old proceedings. Hence, it is hereby expedited. No adjournments or any application seeking time could be entertained henceforth without any substantial reason. The points are answered accordingly. Order accordingly.

Date : 14.08.2024
Place : Udgir.

(Bhalchandra R. Zende)
Judicial Magistrate (F.C.)
(Court No.4), Udgir.