

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.9029 OF 2015

1. Chandu s/o Laxman Khandebharad,
Age 59 years, Occu. Agril.,
R/o Satephal, Taluka Jafrabad,
District Jalna
 2. Asaram s/o Rambhau Khandebharad,
Age 51 years, Occu. Agril.,
R/o Satephal, Taluka Jafrabad
District Jalna
- .. Petitioners

Versus

1. Smt. Sagarbai w/o Ishwar Potphode,
Age 65 years, Occu. Labour
R/o Rakshas Bhuvan, Taluka Gevrai,
District Beed, through G.P.A.
Ashok Gokulrao Ganar,
Age 52 years, Occu. Business,
R/o Chikalthana, Taluka and
District Aurangabad
 2. The State of Maharashtra,
through the Collector, Jalna
- .. Respondents

Mr M.G. Devkate, Advocate for petitioners
Mr R.V. Dasalkar, A.G.P. for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 17th December 2015

PER COURT

Heard.

2. In Miscellaneous Application (R) No.3 of 2015 filed by respondent No.1 under the Bombay Regulation VIII of 1927, for grant of heirship certificate, the petitioners filed an objection which came to be rejected by learned Civil Judge, Senior Division, Jalna, initially for adjournment and thereafter on merit, as the petitioners have not claimed relation with the deceased.

3. Upon perusal of the Bombay Regulation VIII of 1927, particularly Clause 4 and 7, which read thus:

"4. **First** - If, before the expiration of the time, any objection is made to the right of the person claiming as heir, executor or administrator, the Judge, on a day to be fixed (of which at least eight days' previous notice shall be given to the parties), shall summarily investigate the grounds of the objections on the one hand, and of the right claimed on the other, examining such witnesses or other evidence as may be adduced by the parties, and either grant or refuse a certificate, as the circumstances of the case may require.

Second - But if from the evidence adduced, it appears that the question at issue between the parties is of a complicated or difficult nature, the Judge may suspend proceedings in the application for a certificate until the question has been tried by a regular suit instituted by one of the parties.

7. **First** - An heir, executor or administrator, holding the proper certificate, may do all acts and grant all deeds competent to a legal heir, executor or administrator, and may sue and obtain judgment in any Court in the capacity.

Second - But, as the certificate confers no right to the property, but only indicates the person who, for the time being, is in the legal management thereof, the granting of such 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, holding a certificate, shall be accountable for his acts done in that capacity to all persons having an interest in the property, in the same manner as if no certificate had been granted.”

4. It is to be noted here that clause-4 of the Regulation does not contemplate that objector must mention about his relationship with the deceased person. The wordings, if are carefully read in clause-1 of Item-4 of the Regulation which provides for deciding the application if raised by objector in the proceedings initiated by a person who claims to be heir, executor or administrator. It is the duty of the Court to summarily investigate the grounds of objection and the right claimed by the claimant. It is also provided that it will be open for the Court to examine such witness or other evidence as may be adduced by the parties for deciding the claim for certificate.

5. In view of above, in my opinion, the order impugned suffers from infirmity.

6. In my view, the order impugned is not sustainable and as such stands set aside in terms of prayer clauses (C) and (D) and it is directed that the application Exh.18 be decided after taking into account the Clause 4 and 7 of the Bombay Regulation VIII of 1927.

5. Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)