

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Original Side)

DATED : 27.03.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

ORIGINAL PETITION No.866 of 2012

1.Jamnadas Hansraj Asher
2.Leela R.Ashar (deceased)
rep by her Power of Attorney Holder
Jamnadas Hansraj Asher
3.Bhupen T.Asher ... Petitioner

Vs.

1.Priya H.Merchant
2.Vasant P.Asher (deceased)
3.Asha P.Sharma
4.Rupa M.Kapadia
5.Shweta R.Swali
6.Mihir P.Asher
7.Pallavi Toprani
8.Bhaves Ashar
9.Bhavni Kamarshi
10.Jessica Ashar ... Respondents

(RR 3 to 6 were recorded as the LR's
of the deceased 2nd respondent as per order
dt 22.12.2014 on Memo dated 18.12.2014)
(RR 7 to 10 were impleaded as LR's of the deceased
2nd petitioner as per order dated 13.11.2014 in
A.No.3450/2014)

ORDER

This Original Petition has been filed under Section 372 of Indian Succession Act read with Order XXV Rule 6 of Original Side Rules, to grant a succession certificate in favour of the petitioner.

2.The case of the petitioners, as stated in the affidavit to the above petition, in brief, is as follows:-

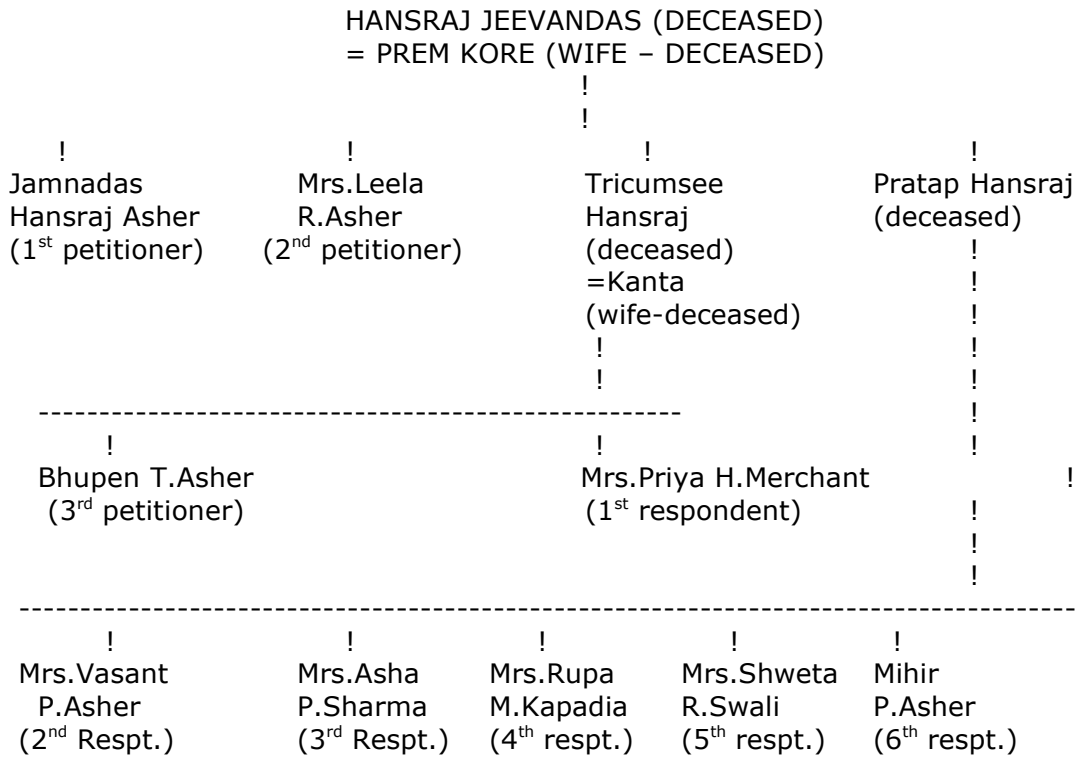
2(1)The schedule mentioned shares, in respect of which the present petition for Succession Certificate is filed, originally belonged to one Hansraj Jeevandas. The said Hansraj Jeevandas died intestate in Chennai on 15.02.1987. At the time of his death, the deceased was ordinarily residing at 2/2, II Crescent Park Road, Gandhi Nagar, Adyar, Chennai. The parents of the deceased Hansraj Jeevandas had pre-deceased him. A due and diligent search has been made for a Will of the deceased Hansraj Jeevandas, but no Will has been found. At the time of his death, the said Hansraj Jeevandas left behind him the following persons as his legal heirs_

- 1)Prem Kore @ Diwali Bai (Wife)
- 2)Jamnadas Hansraj Asher (son - 1st petitioner)
- 3)Leela R.Asher (daughter - 2nd petitioner)
- 4)Tricumsee Hansraj (son – now deceased)
- 5)Pratap Hansraj (son – now deceased)

The schedule mentioned shares were all bought by the deceased Hansraj Jeevandas. The petitioners and the respondents are the

present surviving legal heirs of the deceased Hansraj Jeevandas. The petitioner and the respondents are Hindus governed by the Hindu Succession Act in the matter of succession.

2(2)The following family tree establishes the relationship of the petitioners and the respondents to the deceased Hansraj Jeevandas_



After the demise of Hansraj Jeevandas, a family arrangement came to be executed on 22.04.1988, by Mrs. Prem Kore (wife of the Handsraj Jeevandas) and her sons and daughter viz., the petitioners 1 & 2 herein and Tricumsee Hansraj and Prathap Hansraj. As per the terms

of the family arrangement, the shares described in the schedule to this petition were allotted to the share of Mrs.Prem Kore. Mrs.Prem Kore executed a Will on 25.04.1988. Mrs.Prem Kore died on 20.02.1989. Under the said Will dated 25.04.1988, the shares described in the schedule to this petition were bequeathed to her three sons namely_

Jamnadas Hansraj Asher (1st petitioner)

Tricumsee Hansraj (since deceased) and

Prathap Hansraj (since deceased)

After the demise of Mrs.Prem Kore, a petition in O.P.No.161 of 2001 was filed before this Court for the grant of Letters of Administration in respect of the Will dated 25.04.1988. This Court, by order dated 29.10.2001 granted Letters of Administration in respect of the Will dated 25.04.1988 executed by Mrs.Prem Kore.

2(3)Mr.Pratap Hansraj was one of the sons of Hansraj Jeevandas. Mr.Pratap Hansraj died intestate on 11th May 1999. He left behind him, the respondents 2 to 6 herein as his legal heirs. After the demise of Pratap Hasraj, his legal heirs namely respondents 2 to 6 applied to this Court in O.P.No.372 of 2003 for the grant of Succession Certificate. By order dated 27.10.2003, this Court granted Succession Certificate in favour of the legal heirs of the deceased

Pratap Hansraj. Even in the said Succession Certificate, the 1/3rd share of the deceased Pratap Hansraj in the schedule mentioned shares was the subject matter. Under the Will of Mrs.Prem Kore, the deceased Pratap Hansraj had bequeathed 1/3rd share in the schedule mentioned shares.

2(4)Another son Hansraj Jeevandas viz., Tricumsee Hansraj died instate on 21.12.2009 in Chennai. His wife viz., Kanta also died on 11.09.2011 in Chennai intestate. The 3rd petitioner (son), the 1st respondent (daughter) are their legal heirs.

2(5)Thus, on the date of presentation of this petition, the petitioners and the respondents are the legal heirs of Hansraj Jeevandas, who is the original owner of the schedule mentioned shares. During the pendency of the present Original Petition, the 2nd petitioner viz., Leela R.Ashar died on 20.03.2013. The 2nd petitioner's legal heirs were impleaded as respondents 7 to 10. Similarly, as the 2nd respondent Vasant P.Asher died during the pendency of the original petition, the respondents 3 to 6 were recorded as his legal heirs.

2(6)It is stated by the petitioners that on 08.11.2006, the

consultant for the petitioners and the respondents herein visited the Office of ITC Limited in Kolkata and personally handed over a letter to ITC Limited for the transfer of the shares standing in the name of Hansraj Jeevandas in the names of his surviving legal heirs. Along with the letter dated 08.11.2006, the two original share certificates of ITC Limited were also handed over to ITC Limited. Thereafter, between November-2006 and till the time of presentation of this petition, a series of correspondence ensued between ITC limited and the consultant of the parties hereto regarding the transmission of the schedule mentioned shares in the names of the parties hereto. Ultimately, ITC limited took a stand by email dated 30.06.2011 that the necessary orders of competent Court should be obtained to establish that the petitioners and the respondents herein the legal heirs of Hansraj Jeevandas. ITC Limited was not ready to accept the family arrangement executed on 22.04.1988 as well as the subsequent order granting Letters of Administration in respect of the Will of Mrs.Prem Kore (wife of Hansraj Jeevandas) granted in O.P.No.161 of 2001. Hence, the petitioners have filed the present application seeking for grant of Succession Certificate.

3.The 3rd petitioner examined himself as P.W.1 and he reiterated the averments in the affidavit to the petition. P.W.1 has marked the

following documents as Ex.P.1 to 14_

<i>Ex.P.1</i>	<i>Photocopy of the death certificate of Hansraj Jeevandas</i>
<i>Ex.P.2</i>	<i>Photocopy of legal heirship certificate in respect of Hansraj Jeevandas</i>
<i>Ex.P.3</i>	<i>Photocopy of family arrangement dated 22.04.1988</i>
<i>Ex.p.4</i>	<i>Photocopy of Death Certificate of Prem Kuvan alieas Diwali</i>
<i>Ex.P.5</i>	<i>Photocopy of legal heirship certificate in respect of Prem Kuvan alias Diwali dated 08.09.1989</i>
<i>Ex.P.6</i>	<i>Photocopy of Probate Certificate in O.P.No.161 of 2001 dated 17.09.2001</i>
<i>Ex.p.7</i>	<i>Photo copy of Succession Certificate granted in O.P.No.372 of 2003 dated 27.10.2003</i>
<i>Ex.P.8</i>	<i>Compute generated Death Certificate of Tricumsee Hansraj Asher</i>
<i>Ex.P.9</i>	<i>Photo copy of Legal Heirship Certificate in respect of Tricumsee hansraj Asher dated 09.06.2010</i>
<i>Ex.P.10</i>	<i>Computer Generated Death Certificate of Kanta Tricumdas, who died on 11.09.2011</i>
<i>Ex.P.11</i>	<i>Office copy of letter dated 08.11.2006 from one Mr.K.Ramakrishan, who is one of the consultant of the petitioners addressed to Mrs.ITC Limited, Calcutta with regard to Transmission of 43290 shares held by deceased Hansraj Jeevandas.</i>
<i>Ex.P.12</i>	<i>Copy of E-mail dated 30.06.2011 received from ITC Limited with regard to the Transmission of Shares</i>
<i>Ex.P.13</i>	<i>Photocopy of letter dated 19.04.2010 received from ITC limited addressed to Mr.K.Ramakrishnan who is one of the consultants of the petitioners.</i>
<i>Ex.P.14</i>	<i>Copy of paper publication effected in one issue of Tamil Daily 'Makkal Kural' dated 04.03.</i>

4.The 6th respondent viz., Mr.Mihir P.Asher was examined as R.W.1 and he has filed an affidavit stating no objection for allowing this application as prayed for. R.W.1 has marked the following documents as Ex.R.1 to Ex.R.4_

<i>Ex.R.1</i>	<i>Consent affidavit of the 7th respondent Mrs.Pallavi Toprani</i>
<i>Ex.R.2</i>	<i>Consent affidavit of the 8th respondent Mr.Bhavesh Ashar</i>
<i>Ex.R.3</i>	<i>Consent affidavit of the 9th respondent Mrs.Bhavani Kamarshi</i>
<i>Ex.R.4</i>	<i>Consent affidavit of the 10 respondent Mrs.Jessica Ashar</i>

5.In view of the evidence of P.W.1 and R.W.1 and the documents, the claim of the petitioners is duly proved and the application has to be ordered as prayed for.

6.This application is allowed as prayed for. Issue Succession Certificate in favour of the petitioners to enable them to collect the securities/debts of the deceased and to receive the interest and dividend specified in the Schedule. They are directed to render an account once in a year.

27.03.2015

SSV

R.SUBBIAH, J.,

SSV

O.P.No.866 of 2012

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