

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

WRIT PETITION NO. 5567 OF 2017

Motiram Gabba Chavan

..PETITIONER

VERSUS

Vithal Bhau Gadge

..RESPONDENT

....
Mr. S.R. Shirsat, Advocate h/f Mr. S.S. Jadhavar, Advocate for petitioner.
....

**CORAM : M.S. SANKLECHA, J.
DATED : 02nd MAY, 2017**

ORDER :

1. This petition challenges the order dated 30th January, 2017 passed by Second Joint Civil Judge, Senior Division, Parbhani. The respondent herein had applied for heirship certificate of Ms. Tulsabai Gadge under Section 2 of the Bombay Regulation Act, 1827.

2. The petitioner filed his objection to the respondent being declared as legal heir of Ms. Tulsabai Gadge. The objection was on the ground that the entire claim for being declared as legal heir of Ms. Tulsabai Gadge was only with a view to claim possession of land over which the

respondent was in possession. This land was taken by the petitioner from Ms. Tulsabai Gadge on payment of entire consideration although without any sale deed being executed. This possession has continued undisturbed with the petitioner for over 25 years.

3. The impugned order records the fact that present application does not decide the possession/ownership of the land which the petitioner claims to be in possession of. This is an issue on merits and the declaration of respondent as legal heir would not in any manner touch the dispute on merits. In the above view, the impugned order dismisses the petitioner's objection.

4. Mr. Shirsat, learned Counsel for the petitioner states that respondent had prepared false documents with regard to the death certificate of Ms. Tulsabai Gadge and in that regard an F.I.R. had also been lodged. In the above view, it is submitted that the grant of legal heirship to the respondent was not justified.

5. On the basis of the fact available on record, no fault can be found with the impugned order. Mere filing of a complaint or lodging of an F.I.R. would not by itself establish that the respondent is not the legal heir of

deceased Ms. Tulsabai Gadge. It is only after it is successfully established the documents on the basis of which the respondent claims to be legal heir is forged then the petitioner would be entitled to oppose the grant of legal heirship to the respondent. At this stage merely on the basis of the complaint filed and/or F.I.R. lodged, the impugned order cannot be said to be excess of jurisdiction.

6. In view of the above, no interference is called for. Petition is dismissed. No order as to costs.

(M.S. SANKLECHA, J.)

SSD