

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 9052 OF 2016

Nivrutti Vitthal Bhunde
Vs.

... Petitioner

... Respondent

Mr. Drupad S. Patil, Advocate for the petitioner.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 5th June, 2017.

P.C.:

Rule. Rule made returnable forthwith. The petition is heard finally and decided at the stage of admission.

2. This Writ Petition is directed against the order dated 8th March, 2016 passed by the Joint Civil Judge Junior Division, Pune in Miscellaneous Civil Application No. 561 of 2015 thereby rejecting the application for heirship certificate. The application for heirship certificate was made by the petitioner/applicant on the ground that his father Vitthal Raghu Bhunde has left the house since 23rd October, 2006 and thereafter he was not heard of for almost 10 years. Therefore, he has moved an application for heirship certificate and relied on presumption under sections 107 and 108 of the Indian Evidence Act, which says that if a person is not heard for 7 years,

then he is presumed to be dead. However, the learned Judge, after considering the facts and law, has rejected the Application. Hence, this Writ Petition.

3. Today, the learned counsel for the petitioner has produced certified copy of the death certificate of his father Vitthal Raghu Bhunde and pointed out that Vitthal Bhunde has expired on 21st July, 2010 at Pandharpur. He also produced the letter dated 17th June, 2016 written by the Sr. P.I., Pandharpur Police Station to the petitioner wherein it was mentioned that an unclaimed dead body was found at Pandharpur at the river bank and after conducting the postmortem, it was found that Vitthal Raghu Bhundu died due to tuberculosis. Considering these two documents, the order dated 8th March, 2016 passed by the Joint Civil Judge Junior Division, Pune is hereby set aside. Miscellaneous Civil Application No. 561 of 2015 is hereby restored to its file. The petitioner is directed to produce death certificate of his father Vitthal Raghu Bhunde, letter written by Sr. P.I. and other documents before the trial Court. The learned trial Judge after taking into account the evidence produced by the petitioner, shall decide the said Application afresh on merits within three months from today. The petitioner/applicant to appear before

the trial Court on 15th June, 2017.

4. Writ Petition is allowed.

(MRIDULA BHATKAR, J.)