

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

1021 WRIT PETITION NO. 3164 OF 2015

MAHADEVI RAMCHANDRA LENDHE
VERSUS
SHRIMANT RAMCHANDRA LENDHE AND OTHERS

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Advocate for Petitioners : Mr. Parag Vijay Barde.

Advocate for Respondents : Mr. Mahesh K. Bhosale.

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CORAM : **V. K. JADHAV, J.**

DATE : 05th January, 2018.

ORDER:

. The learned counsel for Petitioner submits that on 10th October, 2007, the mother of Petitioner expired and accordingly, in the month of February, 2008, the Petitioner had applied for heirship certificate vide Miscellaneous Application No.26 of 2008 before the Civil Judge Junior Division, Omerga. The other legal heirs as mentioned in Miscellaneous Application No.26 of 2008 filed their consent written statement for issuance of heirship certificate as sought by the Petitioner. The learned Civil Judge Junior Division, Omerga by order dated 7th July, 2008 below Exhibit 1 in Miscellaneous Application No.26 of 2008 though allowed the application in terms of its prayer clause, further imposed the condition in the operative part of the order

to the effect that the Petitioner cannot use the legal heirship certificate for withdrawing of the amount and endorsement to that effect should be made on the legal heirship certificate.

2 The learned counsel for Petitioner submits that in view of the provisions of the Bombay Regulation VIII of 1827, particularly in terms of the provisions of Rule 3, if no objection is received, the Court shall grant a certificate in the form contained in Appendix B, declaring the Petitioner to be recognized heir of the deceased. The learned counsel submits that on perusal of Appendix B, it appears that no such condition as imposed by the Court, is contemplated. The learned counsel submits that even the Petitioner has filed a review application before the Court and even though the Court was convinced, refused to interfere in the order on the ground that the Court can correct only the typographical and arithmetical mistake.

3 I have also heard the learned counsel for the Respondents. He supports the contentions made on behalf of the Petitioner.

4 Rule 3 of the Bombay Regulation VIII of 1827, which is relevant, is reproduced hereinbelow:

“3. If, at the expiration of the time mentioned in the proclamation, no sufficient objection has been made, the Court Shall forthwith receive such proof as may be offered of the right of the person making the claim, and, if satisfied, shall grant a certificate in the form contained in Appendix B, declaring him the recognized heir, executor or administrator of the deceased.”

5 On perusal of Rule 3 of the Bombay Regulation VIII of 1827, it appears that if the Court is satisfied, shall grant a certificate in the form contained in Appendix B, declaring the Petitioner to be recognized heir of the deceased. On perusal of Appendix B, I do not find that any such condition can be imposed while issuing the heirship certificate. In terms of the provisions of Rule 1 of the Bombay Regulation VIII of 1827, whenever a person dies leaving property, whether moveabl or immovable, the heir or executor, or legal administrator, may assume the management, or sue for the recovery, of the property, in conformity with the law or usage applicable to the disposal of the said property, without making any previous application to the Court to be formally recognized and in terms of Rule 2 of the Bombay Regulation VIII of 1827, if the heir is desirous of having his right formally recognized by the Court, for the purpose of rendering it

more safe for persons in possession of, or indebted to, the estate to acknowledge and deal with him, the Judge, on application, shall issue a proclamation, in the form contained in Appendix A, inviting all persons who dispute the right of the applicant and if no sufficient objection is offered, the Judge will proceed to receive proof of the right of the applicant, and, if satisfied, grant him a certificate of heirship, executorship or administratorship, as the case may be.

6 In view of the above, I find that the condition as imposed in clause (3) of the operative part of the order is unwarranted and uncalled for. The writ petition is deserves to be allowed to that extent. Hence, the following order:

ORDER

- I. The writ petition is hereby allowed.
- II. The impugned order dated 7th July, 2008 passed by the Joint Civil Judge Junior Division, Omerga below Exhibit 1 in Miscellaneous Application No.26 of 2008, is hereby quashed and set aside to the extent of clause (3) of the operative part of the order.

III. Rest of the order stands confirmed.

IV. The writ petition is accordingly disposed of.

[V. K. JADHAV, J.]

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