

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1264/2017

Sau. Vimal Sukhadeo Dhanwate

..VS..

Smt. Jyoti Angajkumar Dhanwate

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : 03/01/2019

The petitioner has challenged the order passed by the trial Court certifying that the respondent – Jyoti is the recognized heir of deceased – Angajkumar Sukhadeo Dhanwate. The order issuing succession certificate in favour of the respondent – Jyoti is passed as per the terms and conditions of the settlement at the mediation center. The petitioner contends that she was forced by the advocate representing the respondent – Jyoti to give consent on the settlement terms.

The order passed by this Court on 21/07/2017 shows that this writ petition has to be heard with W.P. (St.) No. 8223/2015. As per this order, W.P. (St.) No. 8223/2015 (rejected W.P. No. 563/2015) is listed. The registration of that writ petition is refused as the petitioner/advocate of the petitioner failed to remove the office objections. The registration of W.P. (St.) No. 8223/2015 is refused on 24/08/2015. The petitioner in that writ petition has not taken any steps to get the writ petition restored.

None appeared for the petitioner on 21/03/2018, 13/12/2018 and 17/12/2018. Today also, none appeared for the petitioner in the morning session. The matter was kept back. Shri A. Ananthkrishnan, Advocate and Shri V.P. Maldure, AGP were requested to assist the Court. Again none appears for the petitioner in the afternoon session.

Shri A. Ananthkrishnan, Advocate and Shri V.P. Maldure, AGP have pointed out the judgment delivered by the Division Bench of this Court in the case of Aloysius Manuel D'souza & ors. vs. Mary Kamala William Manuel D'souza & ors. reported in (2006) 6 Bom CR at page 56, in which it is laid down that grant of heirship certificate does not establish the right of the party in whose favour it is granted, in the property of the deceased and the rights of the other legal heirs in the property of the deceased are not taken away by grant of heirship certificate in favour of some person. In para no. 10 of the judgment, the Division Bench has observed that the legal heirs who are aggrieved by the issuance of heirship certificate in favour of a party can prosecute their remedy for determination of their rights in the estate/properties of the deceased by pursuing appropriate legal remedy.

The petitioner claims that she has the right in the property left by deceased – Angajkumar Sukhadeo Dhanwate.

Considering the proposition laid down in the judgment given in the case of Aloysius Manuel D'souza vs. Mary Kamala William Manuel D'souza (supra), and the nature of controversy in the present case, especially the disputed facts raised by the petitioner, I am not inclined to entertain

this writ petition. The petitioner will be at liberty to prosecute appropriate remedy to get her right, if any, determined.

With the above observations, the writ petition is **dismissed**.

The assistance rendered by Shri A. Ananthkrishnan, Advocate and Shri V.P. Maldure, AGP is appreciated.

JUDGE

Ansari