

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

WRIT PETITION NO.6277 OF 2016

Abid Khan s/o Qadir Khan and ors.

-vs-

Sadaf Amarin wd/o Yusuf Khan and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri C. A. Joshi, Advocate for petitioners.

Shri H. R. Gadhia, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.

DATE : July 24, 2019

Heard finally with consent of learned counsel for the parties.

The petitioners are aggrieved by the order passed by the trial Court below Exhibit-34 in the proceedings that were initiated by the respondents for grant of heirship certificate under Clause-2(1) of Bombay Regulation, 1827. In the said application it was prayed that a heirship certificate be issued to the said applicants as according to them they were the legal heirs of one Yusuf Khan. In those proceedings the petitioners filed an application under provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 stating therein that as the application was not filed with proper Court fees, it was liable to be rejected. By the impugned order the trial Court observed that in the said proceedings the title of the deceased to his property was not being decided and it was only the entitlement of the persons claiming the heirship certificate that was being decided.

2. Heard Shri C. A. Joshi, learned counsel for the petitioner and Shri H. R. Gadhia, learned counsel for the respondent No.1.

On hearing the learned counsel and in the light of the decision in *Shashikant s/o Gangadhar Thorat and anr. vs. Punja s/o Gangadhar Thorat and ors. 2011(5) Mh.L.J. 245*, Shri C. A. Joshi, learned counsel for the petitioners submits that the petitioners be permitted to agitate their grievance with regard to incorrect valuation of the application in case the Court finds the original applicants entitled for heirship certificate. Shri H. R. Gadhia, learned counsel for the respondents submits that in that case the respondents be permitted to raise appropriate objections if such application is made.

3. Accordingly the writ petition is disposed of by granting liberty to the petitioners herein to raise a grievance with regard to incorrect valuation of the application moved under Clause-2 of Bombay Regulation, 1927 in case the Court finds the original applicants entitled for grant of heirship certificate. If any such objection in respect of valuation of the proceedings is raised, the applicants are free to oppose the same on its merits.

The Writ Petition is disposed of with aforesaid observations. No costs.

JUDGE