

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

974 WRIT PETITION NO. 2041 OF 2021

YOGITA W/O ANIL SANGWAI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

.....

Advocate for Petitioners : Mr. M. G. Deokate
AGP for Respondent-State : Mr. R. D. Sanap

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CORAM : V. K. JADHAV, J.
DATED : 9TH FEBRUARY, 2021

PER COURT :-

1. Heard finally with consent at admission state.
2. The petitioners have filed Civil Misc. Application (*Kachcha Nond*) No. 227 of 2019 for issuance of legal heirship certificate before Civil Judge Junior Division, Jintur, being legal heirs of deceased Yashwant Choudhari and Mangala Choudhari. Petitioner nos. 1 and 3 are daughters and petitioner no.2 is the son of deceased parents.
3. Learned counsel for the petitioners submits that deceased persons had no fixed abode at the time of their

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death. Deceased Yashwant so also deceased Mangala was serving as Assistant Teacher at Zilla Parishad, Parbhani and as per the pension papers, they were receiving pension from Parbhani Zilla Parishad. Learned counsel submits that both the parents for some time resided with petitioner daughters or some time with the petitioner son. Learned counsel submits that in terms of the provisions of Section 271 of the Indian Succession Act, 1925, the learned Civil Judge Junior Division, Jintur, District Parbhani gets jurisdiction to decide the application seeking legal heirship certificate. However, by the impugned order dated 25.02.2020 the learned Civil Judge Junior Division, Jintur has returned the application to the petitioners herein for presenting it before the court having jurisdiction to entertain and try the application.

4. I have also heard learned AGP for the respondent-State.

5. Section 271 of the Indian Succession Act, 1925 reads as under:

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“271. Disposal of application made to Judge of district in which deceased had no fixed abode.—When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely, or limited to the property within his own jurisdiction.”

6. In the instant case, petitioner nos.1 and 3 are the daughters and petitioner no. 2 is the son of deceased Yashwant and Mangala. Deceased Yashwant and Mangala were serving as Assistant Teachers in the school of Zilla Parishad, Parbhani till their retirement on superannuation on 01.02.2006 and 31.08.2009 respectively. Both of them had no fixed abode at the time of their death. Either they were residing with the petitioner daughters or some time with the petitioner son. In view of the same, the provisions

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of Section 271 of the Indian Succession Act, 1925 squarely apply to the case of the petitioners and in view of the same, the Civil Judge Junior Division, Jintur gets jurisdiction to entertain and decide the application filed by the petitioners seeking legal heirship certificate.

7. In view of the above, the Writ Petition is allowed in terms of prayer clauses “C” and “D”.

8. The Writ Petition is accordingly disposed off.

(V. K. JADHAV, J.)