

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 101 OF 2021

Dilip Gangadhar Salunke and another ... Applicants

Versus

Mohini Yogesh Salunke and others ... Respondents

....

Mr. Suresh Salgare, Advocate h/f Mr. N. V. Gaware, Advocate for applicants

....

CORAM : R. G. AVACHAT, J.

DATED : 21st DECEMBER, 2021

PER COURT :-

. Heard.

2. The challenge in this revision application is to the order dated 09.12.2020, passed in Regular Civil Appeal No. 457 of 2019, whereby the order granting heirship/succession certificate, came to be modified.

3. The applicants herein are the parents of the deceased – Yogesh. Respondent Nos. 1 and 2 herein are the widow and minor daughter of the deceased. Both these respondents had preferred application (Civil Misc. Application No.18/2019) for grant of

heirship/succession certificate. The learned 13th Joint Civil Judge, Senior Division, Ahmednagar, allowed the application issuing succession certificate in the name of the applicants herein and both the respondents. The original applicants (respondent Nos. 1 and 2 herein), therefore, preferred appeal. The appellate Court partly allowed the appeal. The order of the trial Court directing to grant succession certificate in the name of the father of the deceased came to be set aside, maintaining the order in respect of the original applicants and mother of the deceased.

4. The learned Advocate for the applicants herein would submit that before the trial Court the widow of the deceased had conceded to grant succession certificate in the name of the original applicants and parents of the deceased. It was a summary inquiry. Since they preferred appeal challenging the order granting succession certificate in the name of the father of the deceased, the matter ought to have been remanded back with a direction to be tried as suit. According to the learned Advocate, appeal was preferred under Section 96 of the Code of Civil Procedure and not under the provisions of the Indian Succession Act.

5. Considered the submissions made by the learned Advocate for the applicants. The deceased died leaving behind widow, minor daughter and parents. Except the father, all the three are Class-I heirs of the deceased. They are, therefore, entitled to inherit or receive estate of the deceased in equal proportion. There can be no estoppel against law. The appellate Court has rightly modified the order of the First Court, holding the father of the deceased to have not been entitled for succession certificate.

6. This Court sees no reason even to issue notice to the respondents in this revision application.

7. The Civil Revision Application therefore stands dismissed.

[R. G. AVACHAT, J.]

SMS