

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

WRIT PETITION NO.10688 OF 2021

Shesharao S/o Narayanrao Ladhe
Age : 61 years, Occu: Agri,
R/o Ambadi, Tq. Kinwat, Dist. Nanded.

... **PETITIONER**
(Orig. Objector)

VERSUS

1. Smt. Archana W/o. Dayanand Ladhe
Age : 42 years, Occu : Household,
2. Miss Shubangi D/o. Dayanand Ladhe
Age : 21 years, Occu: Education,

Both R/o. Ambadi, Tq. Kinwat, Dist. Nanded
at present R/o Kurha (Dumni), Post. Sukali,
Tq. Arani, Dist. Yavatmal.

...

Advocate for Petitioner : Mr. P.V. Ambade h/f. Mr. Pathan Hamzakhan I.

...

CORAM : MANGESH S. PATIL, J.

DATE : 27.09.2021

PER COURT :

Heard the learned advocate Mr. Ambade holding for Mr. Pathan for the petitioner.

2. The petitioner is a person who is objecting to issuance of a heirship certificate under Bombay Regulation Act, 1827 on an Application filed by the respondents in respect of the deceased husband of respondent No.1 by name Dayanand. He is brother of Dayanand. He is before this Court being aggrieved and dissatisfied by rejection of his Application (Exhibit-68) whereby he had sought recalling of the order passed on his Application (Exhibit-53) for calling a witness whereby his request was

rejected.

3. The learned advocate for the petitioner submits that in fact, his Application (Exhibit-46) was allowed and the witness was called. on the next date when he requested the Court by submitting Application (Exhibit-53) to call the witness with certain document, his Application was rejected on the ground that as per earlier request of issuance of summon the witness was duly served but the petitioner remained absent and did not take any steps. By the Application (Exhibit-68) he once again requested the Court to call the witness as per the original order. It is the stand of the petitioner that the respondent No.1 had obtained divorce. The papers in respect of which were submitted to the Office from which the witness was called. Subsequently, she has also solemnized second marriage and all these facts were relevant to be brought on record and were necessary for just decision of the Application for heirship certificate. Ignoring all such incidents the learned Judge has refused to recall the witness by going into the merits and relevance of the facts sought to be brought on record.

4. I have carefully gone through the papers including the impugned order.

5. Needless to state that there is no dispute about the fact that the respondent No.1 is the wife of the deceased and the respondent No.2 is their daughter. Even according to the stand being taken by the petitioner, no formal divorce was obtained by the couple. Only some sort of declaration was submitted before the authorities from the office from which the witness

is being sought to be called, apparently to claim a land on the basis that she was a landless person, under some Government Scheme. There are no allegations that pursuant to such divorce, during the life time of deceased Dayanand she had solemnized the second marriage. If that be so, in the absence of any stand by the petitioner about legal severance of the marital status between Dayanand and the respondent No.1, as on the date of his death the succession would open and her rights would be crystallized. Her getting remarried subsequently would not divest the property which stood vested in her when her husband Dayanand died.

6. Needless to state that all these circumstances are wholly irrelevant since the proceeding initiated by the respondent is merely for declaring them to be the heirs of deceased Dayanand. The petitioner is admittedly his brother. If that be so, no exception can be taken to the observations of the learned Civil Judge while rejecting the Application (Exhibit-68) by the impugned order. He seems to be alive to all the aforementioned legal aspects and has demonstrated as to how calling the witness would be an exercise in futility and is not necessary for just decision of the Application.

7. I find no illegality in the impugned order. The Writ Petition is dismissed *in limine*. It is made clear that the learned Judge shall not feel influenced by the observations made in this Judgment.

(MANGESH S. PATIL, J.)