

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

WRIT PETITION NO. 15489 OF 2019

Sunita wd/o Rameshrao Garajkar,
Age 52 years, Occ. Household,
R/o. Plot No. 65, Satyam Nagar,
N-5, CIDCO, Aurangabad.

... **Petitioner.**

VERSUS

- 1) Shravan s/o Sarang Garajkar,
Age 5 years, Occ. Nil.
(Being minor is represented by his
real mother, Natural guardian who
is applicant No. 2 herein)
- 2) Smt. Amruta wd/o Sarang Garajkar,
Age 32 years, Occ. Nil.
Both r/o. Plot No. 65, Satyam Nagar,
N-5 Sector, CIDCO, Aurangabad.

- 3) The State of Maharashtra. ... **Respondents.**

...
Advocate for the Petitioner : Mr. Rajendrra S. Deshmukh, Senior
Advocate i/b Mr. Vishan Chavan and Mr. Devang R. Deshmukh.
Advocate for Respondent Nos. 1 & 2 : Mr. R. K. Ashtekar.

CORAM	:	MANGESH S. PATIL, J.
RESERVED ON	:	23.09.2021.
PRONOUNCED ON	:	01.10.2021.

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned Mr. Ashtekar waives service for the respondent Nos. 1 and 2. At the request of the parties the matter is heard finally at the stage of admission.

2. The petitioner is the step mother of deceased Sarang Rameshrao Garajkar who died on 19.09.2013. The respondent No. 2 is his widow and respondent No. 1 is their minor son. The respondents applied for Succession

Certificate under Section 372 of the Indian Succession Act, 1925 (hereinafter 'the Act') in respect of the debts and securities more particularly described in paragraph No. 5 of their application being MARJI No. 823/2014. The learned Civil Judge rejected the application by the judgment and order dated 21.04.2018. They challenged that judgment and order in an appeal under Section 384 of the Act before the District Court bearing M.C.A. No. 101/2018. By the impugned judgment and order the appeal has been allowed directing the Succession Certificate to be issued in the name of the respondent Nos. 1 and 2.

3. The learned Senior Advocate Mr. Deshmukh for the petitioner would submit that the petitioner being the mother of the deceased Sarang who was married to his father after his biological mother had died is a legally wedded wife of his father and being his mother she is a Class-I heir who is entitled to inherit the property left behind by him and the Succession Certificate could not have been directed to be issued to the respondent Nos. 1 and 2 alone. He would refer to and rely upon the decision in the case of **Nagendra Prasad and another Vs. Kempananjamma; AIR 1964 Supreme Court 209.**

4. Learned advocate for the respondent Nos. 1 and 2 Mr. Ashtekar would submit that the the Succession Certificate is being claimed in respect of the debts and securities left behind by deceased Sarang which are his separate properties. Therefore, as far as the estate left behind by him is concerned, by virtue of Section 8 of the Hindu Succession Act which is applicable to the parties, the petitioner being a step mother would fall in the category of Class-II heirs as a widow of the father which is VI entry. As against this the respondent Nos. 1 and 2 being the son and widow of the deceased they would fall in Class-I of the Schedule under Section 8 of the Hindu Succession Act. He would submit 'mother' appearing in Class-I refers to a biological mother as distinguished from a step mother who could lay a claim only as a 'father's widow' which is specifically listed under that entry. He would, therefore, submit that no fault can be found in the impugned

judgment and order directing a Succession Certificate to be issued to them. He would place reliance upon the decisions in the case of **Kirtikant D. Vadodaria Vs. State of Gujarat; (1996) 4 SCC 479** and **Mt. Pitra Kueri Vs. Ujagir Rai and other; AIR 1958 Allahabad 101**.

5. I have carefully considered the rival submissions and perused the record. Part X of the Indian Succession Act, 1925 lays down the provisions regarding grant of Succession Certificate. It prescribes the manner in which an application is to be made, it also prescribes for forum for making such application and also contains a provision of appeal. In my considered view it is utmost necessary to appreciate the scope of an enquiry under this Part and the provisions to my mind are decisive to understand it. Section 372 of the Act requires an application to be submitted. Sub section 3 of Section 373 of the Act further prescribes that when a Judge cannot decide a right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to a person having *prima facie* the best title. Section 375 of the Act then requires a security from a grantee of certificate to indemnify a person who may be entitled to a whole or part of the debt or security regarding which the certificate is issued. More importantly Section 387 of the Act declares that no decision under this Part, upon any question of right between the parties will operate as a bar to the trial of the same questions in any suit or other proceedings between same parties and would not affect the liability of any person who has claimed a debt or security on the basis of a certificate to account therefor to a person who is legally entitled to receive such debt or security. The scheme of the provisions contained in this Part X clearly indicates that an application for Succession Certificate is to be decided only summarily and would not conclusively determine the rights in respect of the debts and the securities which are always subject to a full fledged enquiry into such rights.

6. If such is the legal position, it is sufficient for the present enquiry to barely reiterate the admitted facts. The petitioner is the step mother and not the biological mother of deceased Sarang, whereas the respondent Nos. 1 and 2 are his son and widow. The debts and securities described in paragraph No. 5 of the respondent No. 1 and 2's application stand in the name of Sarang, albeit it is their case that some of such debts or securities have been recovered by the petitioner as his nominee. Needless to state that since the parties are governed by Hindu Succession Act, succession in respect of the properties left behind by Sarang would be governed by Section 8 of that Act and as can be appreciated from the Schedule the respondent Nos. 1 and 2 being son and widow would fall in the Class-I category.

7. So far as the petitioner is concerned, as far as deceased Sarang is concerned being a step mother as distinguished from mother which are two separate entries which can be found in Class-II and Class-I respectively, she would be entitled to inherit to his estate only being a 'father's widow' and not as a 'mother'. Though in the context of a proceeding under Section 125 of the Code of Criminal Procedure and Section 18 of the Hindu Adoptions and Maintenance Act, the following observations in the case of **Kirtikant D. Vadodaria (supra)** in paragraph No. 11 are made those are decisive and the analogy can be fruitfully borrowed :

"11- Admittedly, the expressions "mother" and "step-mother" have not been defined either in the Code or in the General Clauses Act. These expressions have also not been defined by the Hindu Law or the Hindu Adoptions and Maintenance Act, 1956 or by any other Law. As stated earlier, all that the explanation attached to Section 20 of the Hindu Adoptions and Maintenance Act, 1956 provides is that the expression "parent" includes a childless step-mother. This being the position, we have to resort to the dictionary meaning and the meaning in which these expressions are commonly understood in the popular sense. In the Permanent Edition of

WORDS AND PHRASES. Volume 27A, at page 348, the word “mother” has been given the meaning to denote a woman who has borne a child or a female parent, especially one of the human race. In Volume 40 of the said permanent Edition of WORDS AND PHRASES, at page 145, the expression “step-mother” has been given the meaning as to be the wife of one’s father by virtue of a marriage subsequent to that of which the person spoken of is the offspring. It has been further stated that a “step-mother” is a relative by affinity and the relationship continues after the death of the father. BLACK S LAW DICTIONARY, 5th Edition, at page 913, has given the meaning of “mother” as a woman who has borne a child, a female parent. Further, at page 1268, the meaning of “step-mother” is stated to mean the wife of one’s father by virtue of a marriage subsequent to that of which the person spoken of is the offspring. Similarly, in THE SHORTER OXFORD ENGLISH DICTIONARY, Volume II, at page 1360, the meaning of the word “mother” is given as a woman who has given birth to a child or a female parent and at page 2122, the expression “step-mother” has been assigned the meaning as The wife of one’s father by a subsequent marriage. According to Webster Dictionary (International Edition), the expression “mother” means a female parent and that which has produced or given birth to anyone. Thus, on a conspectus view of dictionary meaning of the two expressions- “mother” and “step-mother” in various dictionaries, it clearly emerges that there is inherent distinction between the status of a mother and step-mother and they are two distinct and separate entities and both could not be assigned the same meaning. The expression “mother” clearly means only the natural mother who has given birth to the child and not the one who is the wife of one’s father by another marriage.”

8. Independently, since words “mother” and “father's widow” have been consciously and separately inserted in Class-I and Class-II of the Schedule to the Hindu Succession Act 1956, one can easily comprehend that these two are separate and distinct entities. A conjoint reading of the provisions of the Hindu Succession Act would explicitly reveal that as far as the properties left

behind by a male Hindu, as far as devolution of interest in a coparcenary property is concerned it would be governed by Section 6 and a step mother being a widow of the deceased father, she may be able to lay a claim in the capacity of a widow falling in Class-I. However, so far as a devolution of interest in the property of a step-son, by virtue of Section 8, a step mother would only be entitled to lay a claim in her capacity as a 'father's widow' which is an entry in Class II.

9. In view of such a legal position, when for the present it is only a summary scrutiny of the rights in dispute, no fault can be found with the learned District Judge in directing a Succession Certificate to be issued to the respondent Nos 1 and 2. The learned Civil Judge had grossly erred in refusing to issue any certificate when there is no dispute about the fact that the petitioner is the step mother of Sarang and the respondent Nos. 1 and 2 are his son and widow. If he was of the opinion that the petitioner was also entitled to have a Succession Certificate simultaneously with the respondent Nos. 1 and 2 he could have directed a certificate to be issued in the name of all the three, in stead of dismissing the application.

10. Be that as it may, there is no illegality committed by the learned District Judge in directing the Succession Certificate to be issued in the name of the respondent Nos. 1 and 2.

11. It is also important to note that in the impugned order the learned District Judge has directed a Succession Certificate to be issued without mentioning the debts and securities in respect of which it is to be issued. It is necessary to note that in their application the respondent Nos. 1 and 2 claimed Succession Certificate in respect of the debts and securities mentioned in paragraph Nos. 5 and 7 of their application. In paragraph No. 5 they have enlisted various debts and securities whereas in paragraph No. 7 they have mentioned that the petitioner has already withdrawn some of the debts and securities and mentioned that they would furnish particulars

subsequently. However, no such details seem to have been thereafter furnished by them and none have been demonstrated even before me. In view of such state of affairs it needs to be clarified that the respondent Nos. 1 and 2 would be entitled to a Succession Certificate only in respect of the debts and securities mentioned in paragraph No. 5 of their application.

12. Again, the learned District Judge has simply directed the Succession Certificate to be issued without taking necessary precaution to direct security to be obtained from them under Section 375 of the Act. Therefore, a clarification needs to be added even in this respect.

13. The Writ Petition is partly allowed. The respondent Nos. 1 and 2 shall be issued a Succession Certificate only on furnishing a security as contemplated under Section 375 of the Indian Succession Act, 1925 to the satisfaction of the Trial Court.

14. It is further clarified that the respondent Nos. 1 and 2 shall be entitled to the Succession Certificate in respect of the debts and securities mentioned in paragraph No. 5 of their application.

15. The Rule is made absolute only to above extent.

(MANGESH S. PATIL, J.)

mkd/-