

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.185 OF 2021**

Sagar Manik Farad .. Applicant

Vs.

Laxmi Manik @ Mahadeo Farad
& Ors. .. Respondents

...

Mr. Surel S. Shah for the applicant.

Mr. Sandeep S. Salukhe for respondent Nos.3 and 4.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 17TH NOVEMBER, 2021.

P.C:-

1. The applicant is aggrieved by the dismissal of an appeal instituted by him in the District Court at Barshi, which was preferred being aggrieved by the judgment and order passed by the Civil Judge, Senior Division in Civil Misc. Application No.20 of 2013, thereby declining him the succession certificate.

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2. The order, which is impugned in the appeal refuses succession certificate to the applicant, to which he has applied under Section 372 of the Indian Succession Act on the ground that the succession certificate is for the purpose of obtaining compassionate appointment on the demise of his father Manik @ Mahadeo Farad. The Civil Judge, Senior Division has reasoned that the applicant is the son of the second wife of the deceased and he is the illegitimate child, who is entitled to claim share in the self acquired property of the deceased, but cannot seek succession certificate for the purpose of seeking appointment on compassionate ground. The appellate court has added another reason, being that the heirship certificate is already obtained by the defendants i.e. the other heirs of deceased Mahadeo Farad and the certificate cannot be issued again.

3. As far as the heirship certificate is concerned, my attention is invited to an order passed by the District Judge, Solapur in Civil Misc. Appeal No.171 of 2014, where the present applicant and two others questioned legality and correctness of order dated 11/03/2010 under which the Civil Judge, Junior Division Madha has issued the heirship certificate in favour of the respondents as per the provisions of the Bombay Regulation VIII of 1827. In the appeal filed by the present applicant, the order passed on 11/03/2010 is set aside and the Civil Misc. Application No.12 of 2009 is restored on the file of Civil Judge, Junior Division,

Madha since the learned District Judge was convinced that the present applicant along with his brother Suraj and Laxmi i.e. the mother of Suraj and Sagar, were not impleaded as parties. It is informed that pursuant to the said order, Misc. Civil Application No.12 of 2009 is pending before the Civil Judge, Junior Division, Madha.

4. In the wake of the aforesaid, the very basis on which the impugned order is passed, being the heirship certificate in favour of the respondents, which has debarred the applicant from claiming succession certificate, cannot survive as the heirship certificate, which is granted on 11/03/2010 in favour of the respondents is revoked and the proceedings for conferment of heirship certificate are sub-judice.

5. Interest of justice would be better served if the application of the present applicant is also listed before the Civil Judge Junior Division, who is seized of Civil Misc. Application No.12 of 2009 since the very basis on which the order passed in Civil Misc. Application No.12 of 2009 was set aside, the impugned order dated 02/07/2018 is also set aside and the proceedings are remanded to the Court of Civil Judge, Senior Division Barshi, who shall also determine the rights of the applicant to claim the succession certificate on the basis of his application being Civil Misc. Application No.12 of 2009 (now numbered as Civil Misc.

Application No.1 of 2018). Learned Judge is expected to dispose of the proceedings expeditiously within one year from today. The Civil Revision Application is disposed of in the aforestated terms.

[SMT. BHARATI DANGRE, J.]