

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

61 WRIT PETITION NO.4496 OF 2022

PRAYAGBAI VINAYAK NARWADE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Miss Rakhi V. Sundale, advocate for petitioners
Mr.S.S. Dande, AGP for the respondent no.1.
Mr.A.M. Hajare, advocate for respondent no.5.

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CORAM : S.G.DIGE, J.
DATE : 26.09.2022

P.C. :

. The petitioners have approached this Court challenging the order dated 4th March, 2022 passed by the Civil Judge, Senior Division, Aurangabad below Exhibit – 20 in MANRJI No.27 of 2016, under which the application of the petitioners for correction in succession certificate and seeking directions to respondent nos.2 to 4 to disburse the amount as per Section 37 of the Indian Succession Act, 1925, is rejected.

2. Heard the learned counsel for the petitioners and the learned counsel for respondent no.5.

3. It is the contention of the learned counsel for the petitioners that the father of the petitioners and respondent no.5 namely Devrao Abaji Korde died on 21st

November, 2013 due to old age. The petitioner nos.1 to 8 and respondent no.5 are the daughters of deceased Devrao. They are only his heirs and legal representatives. Except the petitioner nos.1 to 8 and respondent no.5, there is no other heirs and legal representatives to deceased Devrao. After the death of Devrao, the application for succession certificate was filed before the Trial Court. Respondent No.5 was not willing to join as applicant in the said application as she was trying to grab the entire amount, which is left by deceased Devrao. The said application was decided on 12th January, 2016 in which the Trial Court issued joint succession certificate in the names of petitioners and respondent no.5 in respect of the amount mentioned in schedule I of the said application. After granting the joint succession certificate, respondent no.5 is not ready to join with the petitioners for receiving the amount standing in the name of deceased. She is still claiming right over the entire amount. After grant of succession certificate, petitioner nos.1 to 8 approached to respondent nos.2 to 4 to collect their share, but respondent nos.2 to 4 have shown their inability to pay the amount to the petitioners in absence of respondent no.5. They further told to the petitioners that if one of the successor/heir of the deceased refuses to take share then the petitioners must bring the amended succession certificate to that effect from the Court. In this way, even after getting the succession certificate, the petitioners have deprived of from getting the amount and

they are facing many financial problems since last more than six years. The learned counsel further submits that thereafter the petitioners filed application for issuing directions to respondent nos.2 to 4 to disburse the amount lying in the name of deceased Devrao to the petitioners and respondent no.5 equally as per section 37 of the Indian Succession Act but the trial Court below Exhibit-20 by impugned order rejected the said application, which is under challenge.

4. On last date, the learned counsel for respondent no.5 submitted that respondent no.5 has equal share in the amount. On the basis of statement of learned counsel for respondent no.5 as well as both the learned counsel made statement before this Court that the petitioners and respondent no.5 are ready to file the compromise terms before the Trial Court and accordingly, this Court adjourned the matter on last date for filing the compromise terms before the trial Court.

5. Today both the learned counsel submits that respondent no.5 is not ready to sign on compromise terms. The learned counsel for respondent no.5 submits that the main application is pending before the trial Court, hence the petitioners are not entitled for claimed relief.

6. I have heard both the learned counsel. Perused

the impugned order passed by the Trial Court.

7. Admittedly, the joint succession certificate is issued in the names of petitioner nos.1 to 8 and respondent no.5 in the year 2016. The said order has not been challenged. The petitioners and respondent no.5 are the only heirs and legal representatives of deceased Devrao. Respondent nos.1 to 4 ought to have disbursed the amount on the basis of the succession certificate but they sought directions from the Trial Court. Now the application is pending before the Trial Court. The learned counsel for the petitioners submits that, it is not necessary to lead any evidence as succession certificate is already granted by the Trial Court. The Trial Court has to pass the appropriate orders on it. The Trial Court has rejected the application on the ground that the main application is pending and if the application is allowed, it would amount to decide the main application.

8. In my view, if the directions are given to the trial Court to decide the pending application as early as possible and considering the nature of application within 15 days from receipt of the order of this Court on its own merit, it would meet the ends of justice. Hence I pass the following order :-

ORDER

(i) The Writ Petition is partly allowed.

(ii) The impugned order below Exhibit-20 is quashed and set aside.

(iii) The trial Court is requested to dispose of the pending main application filed by the petitioners as early as possible preferably within 15 days after receipt of this order.

(iv) The Writ Petition is disposed of in above terms.

[S.G.DIGE]
JUDGE

SGA