

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

936 WRIT PETITION NO.5235 OF 2022

**BISMILLA BEGUM ALIAS JULEKHA SYED AKBARALI
VERSUS
MIR FARKHUNDA ALI OSMANI MIR GAZANFAR ALI OSMANI AND
OTHERS**

...

Advocate for Petitioner : Mr. Amol Wasmatkar h/f Mr. Patel Fayaz K.

Advocate for Respondents : Mr. S. S. Kazi h/f Mr. Shoab Shaikh

CORAM : MANGESH S. PATIL, J.

DATE : 06.07.2022.

PER COURT :

The respondent no. 1 has filed a proceeding under Section 2 of the Bombay Regulation Act, 1827 seeking a certificate of being heir of deceased Shafikabegum. The petitioner is the sister in law of Shafikabegu (husband's sister). The respondents are, admittedly, brothers and sisters of Shafikabegum who died issueless.

2. The petitioner raised objection. By way of application (Exh. 35) she sought to amend her objection so as to include some contentions regarding absence of few other brothers and sisters of Shafikabegum.

3. By the order under challenge the application has been rejected.

4. I have heard the learned advocates of both the sides.

5. It is to be borne in mind that the scope of enquiry in a proceeding under Section 2 of the Bombay Regulation Act, 1827 is limited in ascertaining and certifying the heirs of the deceased. As has been rightly pointed out by the learned Judge in the impugned order, the right to property is beyond the jurisdiction of the trial court in deciding such

applications, obviously so because of section 7 of the Bombay Regulation VIII of 1827.

6. Again, it is to be borne in mind that a proceeding under Section 2 of the Bombay Regulation VIII of 1827 is not a suit and cannot partake such a form. The enquiry is limited in ascertaining as to whether the person making an application is the heir of deceased.

7. Admittedly, the petitioner is the sister in law of deceased Shafikabegum. There is no dispute that the respondents who are the applicants before the trial court are Shafikabegum's brothers and sisters. The question whether apart from the respondents there are any other heirs or otherwise and whether in their absence the respondents are entitled to claim any heirship certificate is a matter to be gone into and decided by the trial court.

8. Pertinently, if at all there are any such brothers and sisters of Shafikabegum who have been left out, as has been rightly pointed out by the learned Judge in the impugned order, they may independently either raise objection or even may have to apply for revocation of the certificate if at all it is granted in favour of the respondents.

9. The petitioner's prayer to amend the objection is not legally tenable in view of the reasons assigned in the impugned order, which calls for no interference.

10. The Writ Petition is dismissed.

(MANGESH S. PATIL, J.)

mkd/-