

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

978 WRIT PETITION NO.5282 OF 2016

**JULEKHA RAZZAK SHAIKH MEHTAR AND OTHERS
VERSUS
RAZZAK SHAIKH YUSUF SHAIKH MEHTAR DIED LRS AND OTHERS**

...

Advocate for Petitioners : Mrs. Kazi Sabahat T.

CORAM : MANGESH S. PATIL, J.

DATE : 12.07.2022.

PER COURT :

Heard.

2. The petitioners are questioning legality of the order passed by the learned Civil Judge Senior Division whereby her application for succession certificate preferred under Section 372 of the Indian Succession Act is directed to be treated as a suit in view of the controversy between the parties as to the relationship.

3. The learned advocate for the petitioner would submit that the petitioner No. 1 is the legally wedded wife of the deceased. The parties being Muslim, irrespective of the fact whether the deceased was married even otherwise, she would be entitled to a succession certificate. She would further point out that the contention of the respondents in their objection as regards the petitioner No. 1 being married already, the learned advocate would point out that the particulars filed in the form at the office of the Sub Registrar while registering the marriage specifically mentioned that she was already married but had obtained divorce. In view of such state of affairs there has been no dispute and the learned Civil Judge could have continued with and decided the application under Section 372 as it is.

4. Going by the provision of Section 372(3) of the Indian Succession Act, if *prima facie* the court reaches a conclusion that the petitioner No. 1 is entitled to a succession certificate, it may in an appropriate case issue it irrespective of the contest.

5. Conversely, if the learned Judge on the basis of a contest/objection being raised is of the view that the application for succession certificate which is required to be tried as a summary proceeding, it is not feasible to try it in a summary manner in view of the controversy being raised, it has to call upon the parties to lead evidence and decide the proceeding as if it was a suit.

6. Going by the stand being taken by the respondents in their objection, they are seriously disputing the petitioner No. 1 to be the legally wedded wife of the deceased. They have further stated that she was already married and had not obtained any divorce. If such is the state of affairs, no exception can be taken to the order passed by the trial court in directing the matter to be registered as a suit and expecting the parties to participate and decide the issues on material aspects.

7. No prejudice is likely to be caused to the petitioners even if they now participate in the suit.

8. The Writ Petition is dismissed.

(MANGESH S. PATIL, J.)

mkd/-