

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

WRIT PETITION NO.651 OF 2022

**AJAYKUMAR GANGADHARAPPA BURANDE
VERSUS
VAISHALI VIJAY BURUNDE AND OTHERS**

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Advocate for Petitioners : Mr. Kedar S. Warad
Advocate for Respondent Nos. 1 to 3 : Mr Yashodeep P. Deshmukh h/f
Mr. A. D. Kawre

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 21st FEBRUARY, 2022

PER COURT :

1. This petition filed under Article 226 and 227 of the Constitution of India, takes exception to the order dated 06-10-2021, passed by the 2nd Joint Civil Judge, Senior Division, Ambajogai, below Exhibit-50, in Civil Misc. Application No.18/2019, thereby rejecting prayer of the petitioner for adding him as a necessary party.

2. Respondent No.1 wife and respondent Nos. 2 and 3 sons of the deceased Dr. Vijay Gangadharappa Burande filed Civil Misc. Application No.18/2019 for heirship certificate under the provisions of Bombay Regulation VIII of 1827 (for short "the Regulation of 1827") on 16-01-2019. It is contended by the respondents that when the respondents approached the authorities of the hospital for grant of

family pension the authorities demanded heirship certificate. The deceased was owner and possessor of immovable and movable properties described in the application and for recording names of the respondents to the said properties heirship certificate is necessary. Respondent No.4 being mother of deceased Dr. Vijay Burande, filed application Exhibit-13 on 02-03-2019, seeking her impleadment as a respondent in the said proceedings, which came to be allowed vide order dated 16-04-2019 and respondent No.4 was added as a respondent in the said proceeding.

3. The petitioner brother of the deceased Dr. Vijay Burande, filed application Exhibit-50, under Order 1 Rule 10(2) of the Code of Civil Procedure, contending that the deceased had nominated his two sons namely Kshitij (respondent No.2) and Prachit (respondent No.3) and the petitioner for pensionary benefits after his death or retirement. Relying on the Government Resolution dated 29-09-2018, issued by the State of Maharashtra, the petitioner claimed that as per the said Government Resolution if a Government Servant dies before completing 10 years of service, the person nominated by him is entitled for his pensionary benefits and therefore, the petitioner and respondent Nos. 2 and 3 only are entitled for the pensionary benefits of the deceased Dr. Vijay Burande. However, the application is filed by

suppressing this fact and the petitioner ought to have been impleaded as a party in the Misc. Application filed by the respondents. The petitioner, therefore, claimed that considering the claim of the petitioner to the pensionary benefits of the deceased, his presence is necessary for effectively and completely adjudicating and for settling all the questions involved in the application. Hence the petitioner be added as a party to the application under Rule 10(2) Order 1 of C.P.C. After hearing both the parties the trial Court rejected the application of the petitioner. Hence, the present petition.

4. Heard Mr. Warad, learned advocate for petitioner and Mr. Y. P. Deshmukh h/f Mr. A. D. Kawre, learned advocate for respondent Nos. 1 to 3.

5. Mr. Warad, learned advocate for petitioner, by relying on the Government Resolution dated 29-09-2018, submits that since the petitioner is nominated by the deceased, he is entitled to be heard in the matter as he is a necessary party. He submits that though the petitioner is not a class-1 heir, however, in view of his nomination in terms of paragraph No.4(a) of the Government Resolution dated 29-09-2018, he is entitled to get the pensionary benefits or he can be the custodian of the pensionary benefits of the deceased. According to him, in view of his

nomination and in view of the said Government Resolution, the petitioner being brother of the deceased Dr. Vijay Burande, is a proper party to the proceedings and the trial Court ought to have allowed the application filed by the petitioner and added him as a necessary party in the proceeding.

6. The learned counsel for respondents, on the other hand, submits that the trial Court was justified in rejecting the application filed by the petitioner by giving cogent reasons. Supporting the impugned order, he submits that the application was filed by the petitioner beyond the limitation prescribed under Section 2 of the said Regulation of 1827, with a view to come out of the said limitation. By relying on the Madras High Court decision in case of *Firm of Mahadeva Rice and Oil Mills and Others Vs. Chennimalai Goundar*, reported in *AIR 1968 MADRAS 287*, he submits that the petitioner is neither a necessary party nor he has right to be heard in the matter. He, therefore, submits that the petition may be dismissed.

7. The learned advocate for respondents, during the course of arguments has submitted that Writ Petition No.11613/2019 is filed by respondent No.1 seeking pensionary and consequential benefits of the deceased Dr. Vijay Burande. In the said petition the present petitioner is

also a party respondent and the matter is being contested by the respective parties before the Division Bench.

8. The proceedings under the said Regulation of 1827 are summary in nature. Admittedly, the petitioner is not a class-1 legal heir of the deceased. The application seeking heirship certificate is filed by the respondents, who are class-1 heirs, on 16-01-2019. The mother of the deceased i.e. respondent No.4 is added as a party respondent in the said proceedings.

9. The petitioner is claiming that he is a necessary party in the proceedings on the basis of nomination made by the deceased. It is not disputed that both the sons of the deceased namely Kshitij (respondent No.2) and Prachit (respondent No.3) are also nominated along with the petitioner in the said nomination. They being class-1 heirs are entitled to claim the heirship certificate. Merely because the petitioner is nominated along with the two sons of the deceased, that by itself does not give right to the petitioner to claim that he should be added as a necessary party in the proceedings filed under the said Regulation of 1827. The object of issuance of heirship certificate is only to give formal recognition of status of the heirs. The entitlement of any person is not decided by the Court issuing the heirship certificate. Therefore, the

petitioner's presence is not necessary for adjudicating the proceedings filed by the respondents.

10. There appears substance in the contention of the learned advocate for respondents that since the petitioner did not file objection to the Misc. Application within the time prescribed under Section 2 of the Regulation of 1827, with a view to come out of that difficulty he has filed the said application Exhibit-50, under Order 1 Rule 10(2). The Misc Application is filed by the respondents on 16-01-2019. The mother of the deceased filed objection on 02-03-2019 and by order dated 16-04-2019, accordingly, she is added as a party in the Misc Application. The application Exhibit-50 is filed by the petitioner on 15-03-2021, that is almost after more than two years of filing of the Misc. Application.

11. In the peculiar facts of the present case the petitioner is neither a necessary nor a proper party in the present proceedings. On impleadment of the petitioner there is every likelihood of irrelevant matters would be considered by the trial Court at the instance of the petitioner.

12. Section 8 of the Regulation of 1827 provides that "the refusal of the certificate by the Judge shall not finally determine the rights of persons whose application is refused, but it shall still be

competent to him to institute a suit for the purpose of establishing of his claim”. In this view of the matter, the petitioner is entitled to adopt the remedy available to him in law to agitate his claim.

13. The trial Court was justified in coming to the conclusion that it is not going to decide as to who is going to get the pensionary benefits of the deceased and the petitioner has opportunity to raise his claim of pensionary benefits before the competent authority. The petitioner is, therefore, neither a necessary nor a proper party in the proceedings. There is no error or perversity in the order impugned in the present petition. Writ petition being devoid of merits is dismissed. No costs.

14. At this stage, the learned advocate for petitioner prayed for continuation of ad-interim relief granted in favour of the petitioner. For the reasons stated in this order, I am not inclined to continue the said ad-interim relief. Request is rejected.

(NITIN B. SURYAWANSHI, J.)