

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 1113 OF 2021**

Nita w/o Baburao Khadse (Nita wd/o Ewan Tayade)

vs.

Smt. Lalita Alias Treza wd/o Avan alias Ashok Tayade and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. M.R.Johrapurkar, Advocate for petitioner.
Mr. V. M.Gadkari, Advocate for respondent No.4.

CORAM : MANISH PITALE J.

DATE : 15/06/2022

The present petition challenges order dated 14/02/2019, passed by the Court of District Judge – 6, Akola (hereinafter referred to as the ‘District Court’), whereby an appeal filed by the respondents was allowed and judgment and order dated 28/07/2016, passed by the Court of Civil Judge Senior Division, Akola, was set aside. While setting aside the aforesaid order, the District Court directed that heirship certificate be issued in favour of the respondents under Rule II of the Bombay Regulation VIII of 1827.

2. In the present case, a proceeding under the aforesaid Regulation was initiated by the

respondents before the Court of Civil Judge Senior Division claiming that they were entitled for heirship certificate. The petitioner was made a non-applicant in the said proceeding on the basis that she also claimed to be wife of the deceased Ewan Tayade. The aforesaid Court took into consideration the contentions raised by the rival parties and by order dated 28/07/2016 found that the application deserved to be rejected for the reason that proper details of movable and immovable properties were not furnished and proper Court fees was not paid as per the aforesaid Regulation, apart from other reasons.

3. Aggrieved by the said order, the respondents herein filed an appeal under the aforesaid Regulation read with Order 43 Rule 1 of the Civil Procedure Code claiming that the Court below had erred in rejecting the application for heirship certificate to be issued in favour of the respondents. While granting the said direction, the District Court proceeded to consider the material on record and gave findings as regards the rival claims pertaining to status of the petitioner, as well as respondent No.1.

4. Aggrieved by the said order, the present writ petition was filed, wherein notice was issued and the respondents entered appearance through counsel.

5. Mr.Joharapurkar, learned counsel for the petitioner, placed reliance on Clause (4) of the aforesaid Regulation to emphasize that when a question of complicated or difficult nature arises before a judge in proceedings initiated under the said Regulation concerning issuance of heirship certificate, such proceedings are required to be suspended, until the question is tried in Regular Civil Suit instituted by one of the parties.

6. Reliance is placed on the case of ***Vijaya Balasaheb Deshmukh vs. Sandhya Ravindra Deshmukh 2015(5) All M.R. 809***. On this basis it is submitted that the impugned order deserves to be set aside.

7. On the other hand Mr. Gadkari, learned counsel appearing for the respondent No.4 submitted that this Court may pass appropriate orders in terms of the law laid down as regards the manner in which application for grant of heirship certificate has to be decided under the said Regulation.

8. The respondent Nos.1 to 3 filed reply, but none has appeared on their behalf when the petition is called out for hearing. In the reply, respondent Nos.1 to 3 have sought to defend the impugned order passed by the District Court, contending that based on the material on record the certificate was correctly granted in favour of respondent Nos.1 to 3.

9. This Court has considered the aforesaid Regulation and also material placed on record. A perusal of the documents placed on record and the stands of the rival parties would show that there were indeed complicated and difficult questions that arose in the matter in the light of the fact that the petitioner as well as respondent No.1 both claimed to be widows of the deceased.

10. Such a complicated question arising in the matter ought to have prompted the Court of Civil Judge to resort to Clause (4) of the Regulation to suspend the proceedings until either party approached the competent Civil Court by way of Regular Civil Suit for trial and decision of such complicated question. Instead, the Civil Judge proceeded to decide the matter and rejected the

proceeding initiated by the respondents on technical issues.

11. In the appeal filed by the respondent before the District Court, again the aforesaid aspect of the matter was completely ignored and the District Court proceeded to consider the matter on merits. In the process, the District Court in the impugned order has rendered findings on the validity of the claim of the petitioner that there was divorce between respondent No.1 and the deceased. Such question was complicated in nature and it ought to have been left to the Civil Court to decide. This is clear from the aforesaid judgment in the case of *Vijaya Balasaheb Deshmukh* (supra) relied upon by the learned counsel for the petitioner, wherein it has been specifically held that when a complicated question of facts or law arises, the parties ought to be directed to file Regular Civil Suit for fulfledged trial instead of granting heirship certificate under the said Regulation. The said decision of this Court is based on the language of Clause (4) of the aforesaid Regulation.

12. In view of the above, this Court is of the opinion that orders passed by both the Courts below are rendered unsustainable, for the reason that when

such complicated question arose in the matter, in the light of the stands taken by the rival parties, the proceeding initiated by the respondents ought to have been suspended till the either of the parties instituted a Regular Civil Suit before competent Court for decision on the complicated question that arose in the matter.

13. Hence, the judgment and order dated 14/02/2019, passed by the District Court, as well as judgment and order dated 28/07/2016 passed by the Court of Civil Judge Senior Division, Akola are quashed and set aside. The proceeding initiated by the respondents bearing M.J.C.No.329 of 2015 is remanded to the Court of Civil Judge Senior Division, Akola.

14. It is further directed that the proceedings shall remain suspended till either of the parties, approach competent Civil Court by filing Regular Civil Suit for resolution the complicated question of facts and law that arises in the matter.

15. The Writ Petition Stands disposed of.

JUDGE