

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 909 OF 2022

Panjab s/o Tulshiramji Taywade,
Aged about 62 years, Occ. - Labour,
R/o Sirajgaon Band, Taluka-Chandur
Bazar, District – Amravati.

.... **PETITIONER**

VERSUS

Smt. Sumitra w/o Nanaji Taywade,
Aged 65 years, Occ. - Household,
R/o Sirasgaon Band, Taluka – Chandur
Bazar, District – Amravati.

.... **RESPONDENT**

Mr. P.V. Navlani, Counsel for the petitioner,
Mr. C.A. Babrekar, Counsel for the respondent.

CORAM : ROHIT B. DEO, J.

DATED : 21st FEBRUARY, 2022

ORAL JUDGMENT :

Heard. **Rule.** With consent, the petition is heard finally.

2. The petitioner is assailing the order dated 21-1-2022 rendered by the learned *Ad hoc* District Judge-2, Achalpur in Regular Civil Appeal 36/2018 preferred under Section 384 of the Indian Succession Act read with Section 390 thereof, whereby allowing the appeal the order dated 02-4-2018 in R.M.J.C. 25/2017 passed by the learned Civil Judge

(Junior Division), Chandurbazar is set aside and the application preferred by the respondent herein for grant of legal heir certification is allowed.

3. Notably, the applicant sought certificate not only in her favour, but in favour of the petitioner too and the operative part of the order reads thus :

- “1) The Regular Civil Appeal No.36/2018 is allowed with costs.*
- 2) The impugned order dated 02-4-2018 passed by the learned Civil Judge (Junior Division), Chandur-Bazar in R.M.J.C. No.25/2017 is hereby set aside.*
- 3) The application filed by the applicant for grant of legal heir certificate is allowed.*
- 4) Issue legal heir certificate under the Bombay Regulation Act, 1827 in the name of the applicant and the non-applicant that they are the legal heirs of deceased Tulshiram Shivramji Tayawade and the deceased-Smt. Kausalyabai Tulshiram Tayawade.*
- 5) The R & P of the learned Trial Court be returned to it.”*

4. As the situation stands today, the legal heir certificate is issued in favour of the petitioner herein and the respondent.

5. It is common ground that Regular Civil Suit 40/2018 is preferred by the respondent seeking a similar relief and the respondent has also filed Regular Civil Suit 41/2018 seeking a decree of partition.

6. It does not appear to be in dispute that the respondent is the daughter of Kausalyabai who married Tulshiram. According to the petitioner, while the respondent may be the daughter of Kausalyabai, she is not born from the marriage of Kausalyabai and Tulshiram. According to the petitioner, he is the son of Tulshiram and Kausalyabai and therefore, is the only person who is entitled for legal heir certificate.

7. Since the grant or refusal of legal heir certificate is not conclusive or decisive of the title, and the only object is to make an arrangement for administration of estate, the issue of entitlement to succeed to the property of Tulshiram as legal heir will have to be decided in the two civil suits independently of the legal heir certificate.

8. In this view of the matter, and subject to the aforesaid observations, writ petition is disposed of.

JUDGE

adgokar