

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

WRIT PETITION NO. 5700 OF 2021

(Madhukar Vasudeo Paseband ..vs.. Sudhakar Vasudeo Paseband and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.R. Deshpande, Counsel for the petitioner.

CORAM : ROHIT B. DEO, J.
DATED : 14-01-2022

The petitioner is aggrieved by order dated 24-7-2020 rendered by the learned Civil Judge (Junior Division), Nandura in Miscellaneous Judicial Case 9/2019 whereby the objection preferred by respondent 3- Purushottam Kute is taken on record.

2. Considering the limited issue involved, only few facts may be noted.

(i) The original owner of the agricultural fields in question was Late Radhabai Paseband. According to the petitioner, Late Radhabai Paseband was the grandmother i.e. the aunt of the father of the petitioner and respondents 1 and 2.

(ii) The petitioner applied for certificate of heirship under the Bombay Regulations, 1827. In response to the proclamation issued, respondent 3 preferred objection, the substratum of which is that the applicant-petitioner herein is not the legal heir of deceased Radhabai Paseband. Respondent 3 contended that heirship

certificate is sought by misrepresentation of facts.

3. In view of the submission of the learned Counsel for the petitioner Mr. S.R. Deshpande that the application preferred by respondent 3 invokes the provisions of Order I Rule 10(2) of the Civil Procedure Code (Code), it may be noted that subsequently respondent 3 preferred a praecipe clarifying that the reference to Order I Rule 10 of the Code is due to inadvertent error and that the said application be treated as an objection to the application for grant of heirship certificate.

4. The submission of the learned Counsel Mr. S.R. Deshpande is that even if the objector is not claiming to be a necessary or proper party, the order of the learned Judge taking the objection on record ought to be quashed. This submission proceeds on the premise that since the objector is not asserting heirship right or right akin thereto *vis-a-vis* the estate of deceased Radhabai Paseband, he is not entitled to object to the application seeking heirship certificate.

5. It is well settled that heirship certificate under the Bombay Regulations, 1827, does not recognize muchless confer ownership right. The limited right is to manage the estate. Be that as it may, it is not as if the objector is a total stranger. The objector claims to be in possession, as protected tenant, of agricultural field which was owned by Late Radhabai Paseband. Petitioner Madhukar

Vasudeo Paseband apparently appeared in the tenancy matter claiming to be the legal heir of deceased Radhabai Paseband. In such a situation, the objector cannot be considered to be a total stranger to the limited issue involved in the application seeking heirship certificate. That apart, the objector has clarified that he is not seeking right to be impleaded either as a necessary or proper party and that though styled as an application under Order I Rule 10 of the Code the same be treated as an objection.

6. The learned Judge has relied on the observations of the learned Single Judge of this Court in ***Baban s/o Ramchandra Shukla v. Shyam s/o Keshav Shukla and others*** in ***Writ Petition 8 of 2018***, which read thus :

“Heard the learned counsel and perused the documents on record. Under 1827 Regulations no provision has been shown which restricts an objection being raised to the grant of heirship certificate after issuing a public notice. There is no requirement pointed out that only a legal heir can raise such objection. Such restriction is not found in those Regulations. If pursuant to the public notice an objection is sought to be raised, same is liable to be considered in the light of the provisions of those Regulations. In that view of the matter it is found that the trial Court was not justified in rejecting the said objection only on the ground that the objector was not a legal heir.

7. Considering that the reliance placed by the learned Judge on the observations in ***Baban s/o Ramchandra Shukla v. Shyam s/o Keshav Shukla and***

others in *Writ Petition 8 of 2018* is not erroneous, I see no reason to interfere in writ jurisdiction.

8. The petition is dismissed.

JUDGE

adgokar