

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

WRIT PETITION NO.5003 OF 2023

**RAJESH VASANTRAO MAHADIK AND ANOTHER
VERSUS
ASHA RANJIT MAHADIK**

...
Advocate for Petitioners : Mr. Ajeet B. Kale

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 04th AUGUST, 2023

PER COURT :

1. Application filed by petitioner No.1 under Order 1 Rule 10 of the Code of Civil Procedure, at Exhibit-11 in Civil Misc. Application No.34/2023, is rejected by the learned Civil Judge, Senior Division, Ahmednagar.

2. Respondent, wife of deceased Ranjit Vasantrao Mahadik, has filed application for succession certificate under Section 372 of the Indian Succession Act. Petitioner claiming to be real brother of the deceased Ranjit, filed application Exhibit-11 seeking his impleadment under Order 1 Rule 10, contending that he and his wife have looked after the deceased. Since birth of the deceased till his death they have borne all the expenses by obtaining loans from their relatives and friends. The said loans are yet to be repaid. Since petitioner is real brother of the deceased, he is the sole heir of the deceased and therefore, is a necessary party. After hearing

the parties, Trial Court has rejected the application. Hence the present petition.

3. Heard learned advocate for petitioner. Perused the writ petition memo, annexures thereto and the impugned order.

4. Application is rejected by the Trial Court by relying on decision of the Delhi High Court in ***Prabha Bhasin Vs. The State (Delhi), 1989 AIR (Delhi) 244***, wherein it is held that,

"A perusal of Section 372 of the Indian Succession Act, 1925 does not indicate that the brothers and sisters are necessary parties to the application. In the circumstances of the case, the only requirement in the said Section for the petitioner was to furnish the name of family or other near relations of the deceased and their respective residences. But, this requirement can not be extended to those persons who are heirs of class II in the presence of heirs of class I under Schedule of Section 8 of the Hindu Succession Act and in view thereof, it cannot be said that the Court was justified in asking the petitioner to implead the brother and sister in the said petition. I do not find that the brother and sister are necessary parties to the application under Section 372 of the Indian Succession Act in the presence of the wife and daughter of the deceased."

5. Trial Court has also observed that, as per Section 8 of the Hindu Succession Act, four classes of legal heirs are given and wife and children of deceased fall in class-I, brothers and sisters fall in class-II.

6. Learned advocate for petitioners submits that since petitioner No.1 is real brother of the deceased, he is necessary

party and his application should have been allowed by the Trial Court. Submission of the petitioner is devoid of merits.

7. Since it is not in dispute that respondent is class-I heir of the deceased in terms of Section 8, petitioner No.1 is not a necessary party to the proceedings. Order passed by the Trial Court is well reasoned order and the same is in consonance with the settled legal position.

8. No jurisdictional error or error of law is committed by the Trial Court while passing the impugned order. There is no illegality or perversity in the order impugned in present petition. No case is made out by the petitioners to interfere in exercise of extraordinary writ jurisdiction. Writ petition being devoid of merit, is dismissed.

(NITIN B. SURYAWANSHI, J.)