

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

WRIT PETITION NO.10670 OF 2023

**BHARAT SHIVSINGH RAJPUT AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH COLLECTOR AND OTHERS**

...
Advocate for Petitioners : Mr. Shyam C. Arora
AGP for Respondent No.1 : Mr. S.N. Kendre
Advocate for Respondent Nos.2 to 5 : Mr. D. L. Vakil (Gangapurkar)
...

**CORAM : NITIN B. SURYAWANSHI, J.
DATE : 28th AUGUST, 2023**

PER COURT :

1. Petitioners are aggrieved by the order dated 05/08/2023, passed by learned 10th Civil Judge, Senior Division, Aurangabad, below Exhibit-19 in Civil Misc. Application No.2349/2022, thereby rejecting application filed by the petitioners under Order 1 Rule 10 of the Code of Civil Procedure.
2. By filing Civil Misc. Application under the Bombay Regulation Act, 1827, respondent Nos.2 to 5 have sought heirship certificate, succession certificate and letter of administration claiming to be legal heirs of late Anil Madhavrao Agraharkar, in respect of properties mentioned in Schedule 'A', 'B' and 'C'.
3. Petitioners filed objection at Exhibit-19 for issuance of heirship certificate contending that deceased Anil Agraharkar, on 04/03/2021, had executed agreement of sale of flats in their favour and they have paid Rs.1,25,00,000/- to him. After death of Anil

Agraharkar, they requested respondents to execute the sale deed but respondents have not responded to their request and the application under Bombay Regulation Act, is filed to defraud the creditors of deceased Anil. The application Exhibit-19 is rejected by the Trial Court. Hence, the present petition.

4. Heard learned advocate for petitioners, learned advocate for respondent Nos.2 to 5 and learned Assistant Government Pleader for respondent No.1. Perused the writ petition memo, annexures thereto and the impugned order.

5. Learned advocate for petitioners assailed the impugned order contending that the same is passed without giving opportunity of hearing to the petitioners. By relying on ***Group Grampanchayat, Sasavane Vs. Sunanda Shamrao Bandishti and Others, 2011(2) Mh.L.J. 424, Baban Ramchandra Shukla and Others Vs. Parag Arvind Shukla and Another, 2018 (1) Mh.L.J. 411*** and ***CRA No.198/2019 [Shantabai Ganesh Sagare Vs. Kantabai Laxman Patil]***, he submits that Trial Court ought to have followed the procedure given under Rule 4 of the Bombay Regulation Act. He, therefore, submits that the impugned order is liable to be quashed and set aside and the objection deserves to be allowed.

6. Learned advocate for respondent Nos.2 to 5 and learned Assistant Government Pleader supported the impugned order.

7. It is well settled that in the proceedings under Bombay Regulation Act, status of heirs is decided and the heirship certificate does not confer any right or title to the property of the deceased.

8. In *Group Grampanchayat, Sasavane* (supra), it is held that grant of heirship certificate to respondents would not in any way affect the right, title or interest, if there be any, of the petitioner in any of the properties of the deceased. Petitioner does not claim to be an heir of the deceased. Consequently, the petitioner would not be a person aggrieved by any order of grant or refusal of grant of the heirship certificate. As such the petitioner cannot be a person aggrieved by the order. Petitioner not being a person aggrieved and being not a necessary party to the original heirship application itself, is not entitled to challenge the impugned order.

It is further held that, in the proceedings for heirship certificate, Court is not required to determine title of the deceased to any property and it is required only to consider whether the persons claiming heirship certificate are the heirs of the deceased.

9. In *Baban Ramchandra Shukla* (supra), it is held that since the proceeding under Bombay Regulation Act is summary proceeding, the complicated questions cannot be decided in the same and civil suit is proper remedy for the parties.

10. In *Beersing Charan Karosiya and Others Vs. Tanhabai*

Pratap Karosiya and Others, 2016 (6) ALL.M.R. 333, the learned Single Judge of this Court has held;

"8. The provisions of the rules made under the Bombay Regulations Act 1827 show that they are framed for recognition of heirship. The provisions show that ordinarily even without having such certificate the heirs can manage the property of the deceased and they can sue or defend the proceedings in respect of property of the deceased both movable and immovable. In spite of this position of law, if the heirs request for certificate, the procedure required in this Act needs to be followed. The procedure involves issuance of proclamation. If no objection is taken to the proceeding, the recognition can be granted by the Court. If there is objection and the objection involves the questions which are complicated or difficult, the Judge has power to suspend the proceeding till issues are tried by regular suit. The procedure further shows that refusal to give recognition does not finally determine the rights and the party who had come to the Court, can file suit for establishing the claims. Thus no title to the property is decided and only recognition to heirs of the deceased is given if the proceeding is not contested as already observed."

11. In ***Rukmini Bhimrao Mane and Another Vs. Dattatray Shamrao Chavan, MANU/MHOR/76720/2022***, the learned Single Judge of this Court has held;

"4.Considering the statutory scheme of the Bombay Regulation Act, the heirship certificate does not declare much less confer title. The certificate merely enable a person to administer the property of the deceased and the rights ultimately shall have to be decided by the Civil Court...."

12. In ***Pradip Gangadhar Rote and Others Vs. Nil, MANU/MH/3305/2019***, the learned Single Judge of this Court at

Nagpur Bench, has held;

"5.A heirship certificate is merely for the convenience of the legal heirs and it is of no consequence while seeking to establish rights to any movable or immovable property left behind by the deceased. Grant of a heirship certificate is only a formal recognition of the status of the applicant as a heir. While a heirship certificate does not confer any right to property, a succession certificate can form the basis for claiming right to securities named therein.... "

13. In the case in hand, petitioners are not claiming to be the legal heirs of deceased Anil Agrahakar. Admittedly, they are third parties. In that view of the matter, they are not entitled to file objection in the proceedings filed under Bombay Regulation Act. The Trial Court has rightly rejected the objection filed by the petitioners by observing that they are neither necessary nor proper parties to the proceedings. Petitioners so far have not approached the Civil Court seeking appropriate relief.

14. 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. Writ petition being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)