

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3796 OF 2023

Jilani Akbar Kokani & others.

...Petitioners.

Versus

Jebunissa G. Kokani and Others.

..Respondents.

*Mr. A. S. Khandeparkar, Senior Advocate along with Mr. Sourabh Mittal i/b
Khandeparkar & Associates for the petitioner.*

Coram : Sharmila U. Deshmukh, J.

Date : August 10, 2023.

P. C. :

1. Office noting shows that as per baillif's report, respondent no. 4 has expired. Mr. Khandeparkar, learned senior counsel appearing for the petitioners seeks leave to delete respondent no. 4 from the array of respondents. Leave granted. Amendment to be carried out forthwith.

2. Office noting shows the notices are served upon respondent no. 1 to 3 and 5 as per baillif's report. Today, none appears on their behalf. Considering the issue involved in the present petition, the same is taken up for hearing.

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3. The petition challenges the order dated 20th January 2020 passed by the 5th Joint Civil Judge, Junior Division, Nashik allowing the intervention application taken out in an application for issuance of heirship certificate. Mr. Khandeparkar, learned senior counsel appearing for the petitioners submits that the petitioners belong to the branch of one Daudsaheb and are the legal heirs of 3rd wife of Amirsaheb who was grand-son of Daudsaheb. He would further submit that the proposed interveners are the heirs belonging to the branch of Shaikhsaheb who was the brother of Daudsaheb. He would further contend that the trial Court while allowing the proposed intervention has factually erred by observing that the proposed interveners are the legal heirs of 3rd wife of Amirsaheb. In fact the petitioners are the heirs of 3rd wife of Amirsaheb and not the proposed interveners.

4. Considered the submissions.

5. The application being civil miscellaneous application No. 168 of 2014 has been filed by the petitioners for issuance of legal heirship certificate in respect of certain properties. In that application, vide order dated 16th August 2014, respondent nos.1 to 5 proposed to intervene. Perusal of the application shows that it is not claimed that

they are the legal heirs of the branch of Daudsaheb. The only contention is that as per the genealogy, the proposed interveners are related to the deceased. In my opinion, for the purpose of issuance of legal heirship certificate, it is not sufficient that they are merely relatives of deceased and it will have to be shown that they are entitled to legal heirship certificate of the deceased.

6. The application discloses that the proposed interveners claim undivided share in the properties which appears to have been the ancestral properties of two branches of Daudsaheb and Shaikhsaheb. The issuance of legal heirship certificate is only a formal recognition of the applicants being the legal heirs of deceased and the same does not determine any right in the properties of the deceased which will be the subject matter of independent proceedings. It appears that such proceedings has in fact been filed and decreed. That being so, rights of the parties in the properties will be governed by those proceedings and in this application, which is restricted to seeking a legal heirship certificate, the proposed interveners, who are admittedly not the legal heirs of the branch of Daudsaheb, are not required to be impleaded as parties. The trial Court while granting the application has factually erred by considering the proposed interveners as the heirs of 3rd wife of Amirsaheb and the applicants as

the heirs of 4th wife of Amirsaheb and has thereby allowed the application.

7. In view of the above, the impugned order dated 29th January 2020 is hereby quashed and set aside. Writ petition stands allowed in above terms.

[Sharmila U. Deshmukh, J.]