



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

WRIT PETITION NO.6248 OF 2022

(Nilkanth Motiram Metange Vs. Rajy Narayan Kusram)

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

Court's or Judge's orders.

Mr. S. M. Vaishnav, Advocate for Petitioner.

CORAM: ANIL S KILOR, J.

DATE: 8th SEPTEMBER, 2023.

The order below Exh.38 dated 26.09.2022 rejecting the application Exh.38, filed by the petitioner for grant of heir-ship certificate came to be rejected by the 12th Joint Civil Judge, Senior Division, Amravati in RMJC No.140/2016. The same is the subject matter of the present writ petition.

2. Mr. Vaishnav, the learned counsel for the petitioner submits that the petitioner is husband of deceased Usha Jangluji Kusram and in the proceedings for issuance of succession certificate, filed by the mother of deceased Usha, the petitioner was defendant No.2 and while answering Issue No.2 whether the petitioner is a legal heir of deceased Usha, Court has answered the said issue in affirmative. It is submitted that in view of the said finding, the petitioner applied for heir-ship certificate which has been rejected without looking into the said judgment. The preliminary objection raised by the petitioner to the objection filed by

the respondent for grant of heir-ship certificate to the petitioner, came to be rejected. He accordingly submits that the preliminary objection has not been properly considered by the learned lower Court. He further submits that the learned lower Court ought to have framed the preliminary issue while deciding the maintainability of the objection, raised by the respondent.

3. None for the respondent though served.

4. In the judgment passed by the 12th Joint Civil Judge, Senior Division, Amravati in Regular Miscellaneous Civil Suit No.50/1999, the petitioner has been held to be the legal heir of deceased Usha and accordingly an application was moved for grant of heir-ship certificate to which the respondent raised objection. The petitioner thereupon filed preliminary objection to the maintainability of the objection raised by the respondent No.2. The learned lower Court without appreciating the fact that the petitioner has already been held and declared as legal heir of deceased Usha rejected the preliminary objection vide impugned order.

5. Thus, it is apparent that the learned lower Court has committed error in not considering the judgment dated 28.09.2007, passed in Regular Miscellaneous Civil Suit No.50/1999.

6. In that view of the matter, I am of the opinion that the matter needs to be remanded back to the learned

lower Court for deciding the preliminary objection raised by the petitioner to the objection raised by the respondent, afresh. Accordingly, the writ petition is partly allowed. The order below Exh.38 dated 26.09.2022 is hereby quashed and set aside. The matter is remanded back to the learned lower Court for deciding the preliminary objection of the petitioner, afresh, after hearing the parties.

7. The preliminary objection shall be decided within two months from today.

(ANIL S. KILOR, J.)