



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

923 WRIT PETITION NO. 575 OF 2024

SHRIKISHAN SAMBHAJIRAO SHINDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the petitioner : Adv. V.V.Bhavthankar
AGP for Respondent-State : Adv.K.R.Jamdhade
...

CORAM : ARUN R. PEDNEKER, J.

DATE : 18.01.2024

P.C. :

1] By way of present Writ Petition, the petitioner is challenging the order dated 08.12.2023 below Exh.30 in C.M.A.No. 855/2022 passed by the learned 10th Joint civil judge Senior Division, Aurangabad.

2] It is the case of the petitioner that the original plaintiff – respondent no.5 filed Special Civil Suit No.123 of 2022 seeking declaration of ownership and injunction in respect of flat No.D-15 situated at Gulmohar Apartment, Uttaranagari, Brijwadi, Aurangabad. The plaintiff also prayed for injunction restraining the revenue authorities not to record name of original defendant no. 8 in revenue record in respect of said flat and also prayed for restraining defendant no.8 not to create third party interest. The

defendant no. 8 is a widow of the deceased and daughter in law of the present petitioner. After demise of the son of the petitioner and husband of respondent no.2 [defendant no.8], the respondent no.2 initiated proceedings i.e. M.A.R.J.I.No.855 of 2022 seeking heirship certificate in respect of flat No.D-15, admeasuring 53.29 sq.mtrs. Survey No.32/2 and 32/6, "Lokmanya Gharukul", Village Brijwadi, Taluka and District Aurangabad. In the said application, respondent no.2 stated that respondent no.2 is a wife and respondent no.3 is a minor daughter of deceased Shrikant. Respondent no.4 is mother of the deceased Shrikant. The respondent nos.2, 3 and respondent no.4 are only Class-I legal heirs and successors of the deceased and they are entitled to succeed and inherit the property left behind by the deceased. As such, they are claiming heirship certificate against the aforesaid flat.

3] Thereafter, the present petitioner filed an application thereby seeking stay to the the proceedings as the substantive civil suit is pending before the Civil Court and that the order dated 08.12.2023 be stayed till the decision in Special Civil Suit No.123 of 2022. By order dated 08.12.2023, the 10th Joint Civil Judge Senior Division, Aurangabad has rejected the said application by holding that this is a proceeding for recognition of heirs for the purpose of mutation in the record of property. It was self acquired property of husband of respondent no.2. The

issues involved in Special Civil Suit No.123/2022 and in MARJI application are different.

4] It is to be noted that Section 4 of the Bombay Regulation VIII of 1827 provides for procedure to deal with an objection made to the right of applicant. It provides for summary investigation of the grounds of objections on one hand, and of the right claim on the other by examining witnesses or other evidence as may be adduced by the parties and for grant or refusal to grant certificate. The heirship certificate does not determine the right of the parties qua the ownership of the properties of the deceased.

5] In view of the same, pendency of the suit cannot be a ground to stay the heirship certificate. There is no error in the impugned order passed by the Civil Judge Senior Division, Aurangabad. Hence, the present Writ Petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC