



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

WRIT PETITION NO.14080 OF 2023

1. Smt. Tarabai wd/o Satyanarayan Jaiswal,
Age 80 years, Occupation Household,
R/o Plot No.254/A, Jaiswal Palace,
Samarth Nagar, Aurangabad.
2. Shailendra s/o Satyanarayan Jaiswal,
Age 54 years, Occupation Business,
R/o as above.

..Petitioners

VERSUS

1. Sushil s/o Satyanarayan Jaiswal,
Age 58 years, Occupation Business,
R/o Plot No.42, Shrinekatan Colony,
Aurangabad.
2. Lalita s/o Madhusudan Jaiswal,
Age 65 years, Occupation Household,
R/o Sarafa Bazar, Nehru Road, Jalna.
3. Jaishree w/o Manoj Jaiswal,
Age 48 years, Occupation Household,
R/o Baijaneer Road, Kadrabad, Tq. And
Dist. Jalna.
4. Sushma w/o Rupesh Jaiswal,
Age 44 years, Occupation Household,
R/o Ward No.12, Ramnagar, Rajura,
At Present Residing At Row Household
No.2, Samarth Heritage, Khadkeshwar,
Aurangabad.
5. Sarita w/o Rajendra Jaiswal,
Dead through L.Rs.
- A) Dinesh s/o Rajendra Kumar Jaiswal,
Age 40 years, Occupation Business,
R/o Opp. Chikalthana Police Station,
Chikalthana, Aurangabad.

- B) Shital w/o Nitin Jaiswal,
Age 34 years, Occupation Household,
R/o Near Manik Talkies Malipura,
Pusad, Tq. And Dist. Yavatmal.
- C) Shrikant s/o Rajendra Kumar Jaiswal,
Age 33 years, Occupation Business,
R/o Opp. Chikalthana Police Station,
Chikalthana, Aurangabad.
6. Rajshree w/o Manish Jaiswal
Dead Through L.Rs.
- A) Shivani d/o Manish Jaiswal,
Age 24 years, Occupation Education,
R/o Flat No.11/05, Priyadarshini
Nagar, Behind RTO Civil Lines,
Nagpur.
- B) Aryan s/o Manish Jaiswal,
Age 19 years, Occupation Education,
R/o As above.
7. State of Maharashtra,
Through District Collector,
Aurangabad.

...Respondents.

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Advocate for Petitioners : Mr. N. S. Muthiyan
Advocate for Respondent No.1 : Mr. A. K. Tiwari.
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CORAM : ARUN R. PEDNEKER, J.

Date of Reserving The Judgment : 07/03/2024

Date of Pronouncing The Judgment : 22/03/2024

JUDGMENT :-

1. By the present writ petition, the petitioners are challenging the order passed by the 10th Joint Civil Judge, Senior Division, Aurangabad in Civil M.A. No.254 of 2022, whereby the respondents No.1 to 6 are granted legal heirship certificate of deceased Mr. Satyanarayan Jaiswal under the Bombay Regulation VIII of Act -1827.

2. Brief facts of the case are as under : -

On expiry of one Mr. Satyanarayan Jaiswal, the respondents No.1 to 6 filed an application for legal heirship. In the said application, the Trial court had issued proclamation in the form contained in Appendix A of the Regulation inviting all persons to dispute the right of the petitioners to appear in the Court within one month and to enter their objection. So also the Court had issued notices to the present petitioners as they were made parties by the petitioners in the application. The petitioners herein appeared in the proceeding but did not file any objection, and thus the respondents adduced evidence and had closed evidence on 14/09/2022 by filing pursis at Exhibit 22. Thereafter, the present petitioners applied for setting aside the order of proceeding without their reply and it was allowed on 13/02/2023. The present petitioners filed reply at Exhibit 26 on 02/03/2023. Thereafter, application is filed by the petitioners for framing of issues/ points of

determination which will aid and assists the parties in proceeding with the Trial in a compact manner factually and legally. The application filed by the petitioners was opposed by the respondents contending that all the facts are admitted i.e. of father and mother, sons and daughters, deaths of two daughters and the petitioners with the respondents No.2 and 3 being the legal heirs, as such, no further adjudication is required and the heirship certificate would be issued in the name of all the legal heirs, and the proceeding be heard. The Court, on consideration of the application and the response of the respondents held that Section 4 of the Regulation provides for summary investigation of the grounds of objections on one hand and of the right claimed on the other, if before expiration of the time any objection is made to right of the person claiming as heir, and held that no framing of issues are required. Against the said order passed by the 10th Joint civil Judge, Senior Division, Aurangabad, the present writ petition is filed.

3. The learned Advocate of the petitioners relied upon the Judgment in case of ***Moran Mar Basselios Catholicos and another Versus the Most Rev. Mar Poulouse Athanasius and Others, reported in 1955 SCR 520***, and submits that issues are required to be framed and relies upon the following part of the Judgment : -

"..... To decide against a party on matters which do not come within the issues on which the parties went to trial clearly amounts to an error apparent on the face of the record. It is futile to speculate as to the effect these matters had on the minds – of the Judges in comparison with the effect of the other points."

4. The learned Advocate for the petitioner also submits that in terms of Section 141 read with Order XX Rule 4 of the Code of Civil Procedure, issues are not framed. Once an objection is raised in summary suit, the case converted in a summary suit, and without issues, it cannot be determined.

5. Per contra, the learned Advocate appearing for respondents relied on the Judgment of Bombay High Court in case of **Group Grampanchayat Versus Sunanda shamrao Bandishti and Others, reported in 2011 (5) Bom.C.R. 162.**

6. Having considered the rival submissions it is to be noted that the succession proceedings are not a suit and are summary proceeding, and since there are admitted facts that all the claimants so also the petitioners are legal heirs of deceased, the legal heirship certificate will have to be granted in terms to all the legal heirs. The legal heirship

certificate holder cannot acquire any title or interest in the estate of the deceased. If right of the petitioners are affected qua any particular property, then the adjudication of the rights will have to be done in the appropriate Forum. The legal heirship proceeding are summary in nature as has been held in the case of **Group Grampanchayat (Supra)** at paragraphs No.7 and 8 which reads as under : -

Clauses 7 and 8 of the Regulation are material and reads thus :

7. First: Recognized heirs, etc., competent to manage property :

An heir, executor or administrator, holding the proper certificate, may do all acts and grant all deeds competent to a legal heir, executor or administrator, and may sue and obtain judgment in any Court in that capacity.

Second : But recognition gives no title to property:

But, as the certificate confers no right to the property, but only indicates the person who, for the time being, is in the legal management thereof, the granting of such certificate shall not finally determine nor injure the rights of any person; and the certificate shall be annulled by the Zilla Court, upon proof that another person has a preferable right.

Third : No relief from responsibility to claimants :

An heir, executor or administrator, holding a certificate, shall be accountable for his acts done in that capacity to all persons having an interest in the property, in the same manner as if no certificate has been granted.

8. Refusal of a recognition no judgment against claim of applicant:

The refusal of a certificate by the Judge shall not finally determine the rights of the person whose application is refused, but it shall still be competent to him to institute a suit for the purpose of establishing his claim."

6. Interpreting the Regulation, in Aloysius Manuel D'souza & ors. Vs. Mary Kamala William Manuel D'souza, 2006(6) Bom.C.R. 56, a Division Bench of this Court has held that the grant of heirship certificate does not establish the right of a party in property of the deceased by itself. The right, if any, of a person claiming ownership in the property of the deceased are not taken away by grant of an heirship certificate to an heir. On the other hand, clause 7 makes it clear that heirship certificate holder is accountable to all persons having an interest in the property for the acts done by him. Based on the heirship certificate simplicitor the heirship certificate holder cannot be said to have acquired any right, title or interest in the estate of the deceased.

7. The legal heirship proceedings being summary in nature and once there is admission as regards the applicants being the legal heirs of the deceased, the objection of the petitioners to frame issues is not sustainable. The reliance placed on Section 141 read with Order XX Rule 4 is misplaced as the proceedings are not in the nature of a suit and once there is an admission as regards the legal heirship of the deceased, there is no further inquiry required at the instance of the petitioners. There is nothing further to be determined by formulating issues and leading evidence. In view of the same, the writ petition is dismissed.

(ARUN R. PEDNEKER, J.)

vj gawade/-.