



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

**944 WRIT PETITION NO. 14846 OF 2021**

1. Smt. Satyabhamabai Vishnu Sapkale,
2. Ku. Shivani Vishnu Sapkale,
3. Mithun Vishnu Sapkale. **...Petitioners**

***Versus***

1. Smt. Sindhu Vishnu Sapkale,
2. Pritam Vishnu Sapkale,
3. Sou. Sonam Walmik Pagare. **...Respondents**

...  
Advocate for the Petitioner : Mr. Sant Tapan Kishor  
Advocate for Respondents No.1 to 3 : Mr. N. U. Telgaonkar

...  
**CORAM : R. M. JOSHI, J.**  
**Dated : June 19, 2024**

**PER COURT :-**

1. This petition takes exception to the order passed in Regular Civil Appeal No.33/2015 whereby the learned Adhoc District Judge-3, Jalgaon set aside the order passed by the learned Civil Judge, Senior Division, Jalgaon in Misc. Civil Application No.176/2012 filed for the issuance of heirship certificate to the respondents herein and partly allowing the application granting heirship certificate except to Smt. Sindhu Vishnu Sapkal.

2. Learned Counsel for the petitioners submits that the petitioners have obtained succession certificate from the Court of competent jurisdiction i.e. High Court Principal Seat At Mumbai. It is his submission that in view of the provision of Section 383 of the Indian Succession Act it is not open for the any other Court to pass any

order granting heirship certificate to any other person. It is his submission that if the respondents are aggrieved by the said order then it is open for them to challenge the same by invoking provisions of Indian Succession Act. To support his submissions, he placed reliance on Judgment of this Court in case of ***Parvatabai @ Beby Wd/o Parasram More and Another vs. Surekha @ Rekha Wd/o Dashrath Surjuse, Writ Petition No.5447/2018, dated 13/02/2019.***

3. Learned Counsel for respondents supported the impugned Judgment. It is his submission that there is no any other heir of the deceased to obtain a declaration to that effect. He submitted that the Judgment cited Supra on behalf of the petitioner pertains to the case wherein it is held that unless there is annulment of the legal heirship certificate granted in favour of one party, no other application can be entertained.

4. As far as present case is concerned, there is no dispute about the fact that the petitioners had obtained succession certificate in respect of the properties of the deceased and in particular for making claim by petitioner No.3 to seek employment with Central

Railway. On their application, succession certificate was granted. As far as respondents are concerned, they preferred application before the Civil Judge, Senior Division, bearing Application No.176/2012 seeking heirship certificate under Regulation 2 of Bombay Regulation Act of 1827. The learned Civil Judge, Senior Division, rejected the application by passing order dated 02/01/2015. The said rejection is based on the premise that the petitioners herein are Class I heirs and the respondents are not, as such they are not entitled to such declaration.

5. This order was challenged by filing Regular Civil Appeal No.33/2015. The learned Adhoc District Judge allowed the appeal and consequently Civil Misc. Application No.176/2012 is partly allowed to the extent of respondents except for respondent No.1.

6. Perusal of the relevant provisions of Indian Succession Act shows that there cannot be two different proceedings in respect of succession and any person aggrieved by the issuance of any certificate of succession Act, is required to file a proceeding to challenge the order of issuance of succession certificate. In the

instant case, however, the respondents herein have filed an application simplicitor for declaration that they are the legal heirs of deceased. Though the learned Counsel for the petitioner has sought to place reliance on the Judgment in case of **Parvatabai @ Beby Wd/o Parasram More** (Supra), but nothing was brought to the notice of this Court which precludes the respondents from preferring any independent application for declaring their status as the legal heirs of the deceased. In absence of specific embargo created by any provision of law, such application would certainly be maintainable.

7. As far as the rejection of a prayer for declaring respondents except respondent No.1 as heir of deceased Vishnu Sapkale is concerned, the findings recorded by the learned Civil Judge, Senior Division, are not in consonance with the material evidence on record. The said error has been rightly corrected by the learned Adhoc District Judge by passing impugned Judgment.

8. It is observed on the basis of evidence that respondents No.2 and 3 are begotten from the relationship of the deceased with Smt. Sindhu Vishnu Sapkale which is in the nature of matrimonial

relationship. Consequently held that respondents No.2 and 3 being children of deceased, are entitled for the declaration to be heirs of the deceased. As far as the rejection of the prayer for declaring respondent No.1 as heir of deceased is concerned, she has not challenged the said order. Thus, no interference is required in the impugned order. There is no merit in the petition, hence petition stands dismissed.

( R. M. JOSHI, J. )

*vj gawade/-.*