

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO.419 OF 2023

Shailesh Uttambhai Mistry and others ... Petitioners

Chandrakant Chabildas Panchal ... Deceased

Mr. Sandeep S. Kumbhar for Petitioners.

CORAM : MANISH PITALE, J.
DATE : FEBRUARY 13, 2024

P.C. :

. Heard learned counsel for the petitioner.

2. By this petition filed under the provisions of the Bombay Regulation Act VIII of 1827, the petitioners are seeking issuance of legal heirship certificate in favour of the surviving legal heirs of the deceased.

3. The petitioners are the nephews and nieces of the deceased, being the children of the sister of the deceased. They are Class II heirs of the deceased. It is specifically stated that the deceased died a bachelor on 08.08.2004. Copy of his death certificate is annexed to the petition.

4. It is brought to the notice of this Court that an earlier petition for grant of legal heirship certificate was filed by the brother and sister of the deceased i.e. Miscellaneous Petition (L) No.3603 of 2018. The petitioner No.2 therein, who was the sister of the deceased, was the mother of the present petitioners.

5. The learned counsel for the petitioners has invited attention of this Court to the order dated 31.03.2022 passed by the Prothonotary and Senior Master of this Court in Miscellaneous Petition (L) No.3603 of 2018. It is brought to the notice of this Court that the petitioners therein

i.e. the brother and sister of the deceased, both, expired during the pendency of the said petition. The petitioner No.1 therein i.e. the brother of the deceased was also unmarried and only the petitioner No.2 therein i.e. the mother of the petitioners in this petition was survived by the petitioners i.e. her legal heirs. In this backdrop, in the said order dated 31.03.2022, the Prothonotary and Senior Master of this Court recorded that the surviving legal heirs of the petitioner No.2 in Miscellaneous Petition (L) No.3603 of 2018 i.e. the petitioners in the present petition, intended to file a fresh petition and that therefore, the aforementioned earlier petition can be disposed of. Accordingly, the said petition was disposed of as infructuous.

6. Considering the aforesaid events brought to the notice of this Court, the present petition, at the behest of the petitioners, is found to be maintainable. The statements made in the petition show that the petitioners are the only surviving legal heirs of the deceased, being his Class II heirs. The deceased was unmarried. It is also specifically stated that the parents of the deceased predeceased him. It is further stated that the legal heirship certificate is required in the context of a tenancy, specifically mentioned in the schedule filed along with the petition. It is also stated that the deceased at the time of his death had a fixed place of abode at Room No.60, Pardiwala Chawl, Suri Mill Road, S. J. Marg, Lower Parel, Mumbai - 400 013. The deceased is stated to have died intestate, without executing any Will.

7. In view of the aforesaid facts brought to the notice of this Court, it is found that the petitioners are the surviving legal heirs of the deceased.

8. In view of the material placed on record, the petition is accepted and proclamation is dispensed with.

9. The petition is allowed in terms of prayer clause (a), which reads

as follows:-

“A) This Hon’ble Court be pleased to issue a legal heirship certificate to the petitioners in respect of room premises mentioned in the petition i.e. Room No.60, Pardiwala Chawl, Suri Mill Road, S. J. Marg, Lower Parel, Mumbai-400 013, State : Maharashtra, under the provision of Bombay Regulation VIII of 1827 certifying that the petitioners i.e. Shailesh Uttambhai Mistry, Hemlata Uttambhai Mistry and Jayshree Uttambhai Mistry (niece / nephews of the deceased) are the legal heirs and legal representatives of the deceased.”

(MANISH PITALE, J.)

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