

Before : Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date :- 29th August, 2024

FOR COMPLIANCE:

52. TP/2635/2024
[Original]
(ECHCBM02036882024)

P. C. : Shri. Siddharth Desai Ld. Advocate for the Petitioner

1. In the present petition, the petitioner Aishwarya Sitaram Bhakare filed the petition for grant of the Letters of Administration in respect of properties left by Dr. Swapnal Sitaram Bhakare (for short "said deceased"). The said deceased had married with Sitaram Sakharam Bhakare. Said deceased died on 08/09/2010. The petitioner is only child of Dr. Swapnal and Sitaram. Said Sitaram died on 23/05/2018. The petitioner, along with Vandana Sitaram Bhakare, has filed another petition for grant of letters of administration in respect of the properties of the said Sitaram, having TP No. 2270/2024. In the said petition, it is stated that the said Sitaram Died leaving his heirs namely Petitioner being daughter from first marriage, Vandana widow (from second marriage) and Aaradhya Sitaram Bhakare a daughter of Sitaram and Vandana. Hence, query was raised about the heirs of the deceased as the Dr. Sitaram since deceased to the deceased. Therefore, property or interest devolved upon the said Sitaram, soon after the death of the Dr. Swapnal, would be passed to his heirs. Hence, said Sitaram's heirs, whose names are mentioned in the TP No. 2270 of 2024, supposed to be mentioned in the present petition.

2. Ld. Advocate for the petitioner submitted that in view of the law laid down by the Hon'ble Supreme Court in case of **Lachman Singh V/s Kirpa**

Singh and Others {(1987)2 Supreme Court Cases 547} the child of the Dr. Sitaram from second marriage is not entitled to inherit the estate of the deceased. I have gone through the said Judgment. Ld. Advocate for the petitioner prepared the family tree and also explained on the chronology of death of deceased persons, referred in the paragraph No.2 of the said Judgment. Ld. Advocate for the petitioner argued that in the cited case, it is held that as per the provisions of the Hindu Succession Act, 1956, the property was belonging to the mother of the Kripa Singh. Hence, as per sec. 15(1)(a) of the HS Act, said Kripa Singh was sole legal heir to inherit the same. Similar facts of the present petition exist. Therefore, said principle applies to the present petition.

3. In the cited case, the Hon'ble Supreme Court has held that a son of a female by her first marriage will not succeed to the estate of another woman performed the second marriage with the husband of the first woman. In the said case, the husband (Battan Singh) had two wives namely Mahan Kaur and Khem Kaur. Mahan Kaur, died after giving birth to Lachman Singh (Plaintiff) and Gurdas Singh. Gurdas Singh died in life time of Battan Singh, leaving behind him, his widow Gurbux Kaur and Son Amarjit Singh. Khem Kaur gave birth to Kirpa Singh. Thereafter, Battan Singh died and properties were devolved upon Khem Kaur, and surviving legal heirs of said Battan Singh. Thereafter Khem Kaur died leaving behind her, his son Kirpa Singh. Kirpa Singh claimed to be sole legal heir of Khem Kaur, whereas, Lachman Singh and Amarjit

Singh, Gurbux Kaur also claimed to be legal heirs of the said Khem Kaur, being son and descendant of Gurudas Singh, respectively. However, it is laid down that the steps son Lachman Singh and Gurudas Singh would not be son of Khem Kaur, within the meaning of Sec. 15(1)(a) of the HS Act.

4. However, in the present petition, the deceased (Dr. Swapnal) died in year 2010 leaving behind her daughter (petitioner) and her husband (Sitaram). Hence, property devolved upon the petitioner and Sitaram, equally vide Section 15(1) (a) of the Hindu Succession Act, 1956. On the death of said Sitaram, in year 2018, said property, to the extent of the share of Sitaram, would further devolve upon his heirs as per Sec. 8 of the HS Act. Now, it is admitted in the TP No. 2270/2024 that Aradhya is the daughter of the said Sitaram from the second marriage. Hence, for the share, which has been devolved upon Sitaram, the said Aradhya would be legal heir, claiming through Sitaram. Furthermore, in the cited case also it is laid down that children from the second marriage would be heirs of the husband, but they can not be heirs of the another female, as per Sec. 15(1)(a) of the HS Act.

5. Hence, the petitioner to mention all legal heirs, who are claiming through Sitaram.

6. S.O. to 06.09.2024

29.08.2024

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with Testamentary Department**