

Before : Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date :- 11th December, 2024

FOR ISSUANCE OF CITATION :

9. TP/5513/2024 P.C. : Shri. GUPTA DHRUV VEDPRAKASH Ld. Advocate for the
(AMH2024000728 Petitioner
OC202400007)

1. Perused Petition. Petition is filed for the Letters of Administration namely Bhimarav Krishna Thombare alias Thombare Bhimarav, who died married on 31.03.2015. His Widow, namely Babai Bhimarav Thombare, died on 16.12.2022. The petitioner is the nephew of the deceased namely, Surendra Shamrao Thombre.

2. In present petition, soon after the death of the deceased, the property devolved upon the widow Babai Bhimarav Thombare, being the widow and Class-I heir of the deceased. She died on 16.12.2022. Hence, in life time of Said Babai, the petitioner or any other class-II legal heirs could not have a right of inheritance for the properties left by the deceased.

3. However, after death of said Babai Bhimarav Thombare (on 16.12.2022), the said property/properties further devolved upon the heirs of the said Babai, in view of Sec. 15(1)(a) of HS Act. From the petition, it appears that there are no legal heirs falling under Section 15(1)(a) of HS Act.

4. Therefore, to ascertain the heirs of the deceased after the death of the his widow, Rule 3 of Section 16 of the HS Act, is applicable. According to this Rule, to ascertain the heirs of the husband of the female, it has to be assumed that soon after the death of the female, her husband dies. Hence, after the death of widow, persons who are alive and comes as per the entry given in the Class-II, as provided in the schedule annexed to the HS Act, can claim an inheritance. Hence, on 16.12.2022 in a petition, only class-II, Entry (ii) heir (i.e. brother of the deceased) can claim the inheritance as per Sec. 9 of the HS Act.

5. Under such circumstances, as per the Section 15(1) (b) read with Rule-3 of Sec. 16 along with

Section 9 of HS Act , only Narayan who falls under the Class-II, Entry-(II) legal heir can claim inheritance to properties of the deceased. Petitioner and others persons, whose names are mentioned at serial no. 2(b) to 2(d) and 3(a) to 3(d) comes at Entry-IV in Class-II legal heirs. Therefore, class-II entry-II heir, only Narayan have the preference, excluding the heirs fallen under subsequent entry.

6. Even otherwise, for sake of discussion, the date of the death of the deceased is considered, then Shamrao predeceased to the deceased and therefore, in life time of Class-II, Entry(II) Legal heirs, Class-II, Entry(IV) legal heirs from the schedule of the HS Act do not have preference over to Class-II, Entry(II) legal heirs. However, as mentioned herein above, in life time of the widow of the deceased, no other than her had a right of inheritance to the properties left by the deceased.

7. The petitioner comes under Class-II, Entry-(IV) legal heirs as per the Schedule annexed to the HS Act. Hence, in life time of the brother of the deceased (Class-II, Entry-(II)), capacity of the petitioner to present the petition comes in question. Hence, Petitioner to satisfy about his capacity.

8. Now at this juncture, Ld. Advocate for the petitioner is relied upon the Order passed by the Hon'ble Court in TP(L)/25555/2023, on 30.11.2023. In the said Petition, the Hon'ble Court considering the circumstance of the petition, granted the relief to the petitioner. However, such authority and powers are vested with the Hon'ble Court and not with this authority. Hence, petitioner to take steps as per the law.

9. S. O. to 14.01.2025

11.12.2024

**Officer on Special Duty,
with Testamentary Department**