



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 7084 OF 2023

(Sarita wd/o Sachin Getme & Ors. Vs. Dhanraj s/o Vithhalrao Getme)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri D.G. Takwale, Counsel for the petitioners.
Shri Alpesh Deshmukh with Shri Tejas Deshpande,
Counsel for the respondent.

CORAM : ANIL L. PANSARE, J.
AUGUST 28, 2024.

Challenge is to order dated 20/7/2023
passed below Exh.30 by the 14th Joint Civil Judge Senior
Division, Nagpur, in M.J.C. No. 554/2019, thereby
permitting the respondent to appear in the matter as non-
applicant.

2] The learned Counsel for the petitioners
submits that the proceedings before the trial Court
pertain to legal heir certificate. The petitioners are Class-I
legal heirs of Sachin Getme, since deceased. The
respondent is the father of Sachin and, thus, is a Class-II
legal heir and is not entitled to participate in the
aforesaid proceedings.

3] The learned Counsel for the respondent has
pointed out that the petitioners have filed application
under Rule 2 of the Bombay Regulation VIII of 1827 (for
short "the said Regulation"). He has invited my attention
to Rule 4 thereof, which provides that any person can file
objection in the said proceedings. Rule 4 reads thus :

*"4. First.—If, before the expiration of the time,
any objection is made to the right of the person*

claiming as heir, executor or administrator, the Judge, on a day to be fixed (of which at least eight days' previous notice shall be given to the parties), shall summarily investigate the grounds of the objections on the one hand, and of the right claimed on the other, examining such witnesses or other evidence as may be adduced by the parties, and either grant or refuse a certificate, as the circumstances of the case may require.

Second.—But if from the evidence adduced, it appears that the question at issue between the parties is of a complicated or difficult nature, the Judge may suspend proceedings in the application for a certificate until the question has been tried by a regular suit instituted by one of the parties.”

4] Thus, Rule 4 would entitle any person, including father of the deceased, to lodge objection. In fact, Rule 2, under which the application has been filed by the petitioners, itself provides that the Court shall notify all persons, who dispute the right of the applicant/s to obtain legal heir certificate. Thus, it is open for any person to lodge objection, which naturally will be considered on its own merits.

5] The provisions of the said Regulation do not really prohibit Class-II heir or for that purpose any person to raise objection to the proceedings filed under Rule 2 of the said Regulation.

6] In that view of the matter, I do not find substance in the petition. The same is accordingly dismissed.

(ANIL L. PANSARE, J.)

Sumit