



(1)

wp488.25

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

27 WRIT PETITION NO. 488 OF 2025
SHANTABAI MURGAPPA KALEMALE SWAMI
VERSUS
RANI MANMATH KALEMALE

Mr.S.V. Natu, Advocate for the petitioner.

CORAM : KISHORE C. SANT, J.
DATE : 17.01.2025

PC :-

01. Heard learned Advocate for the petitioner. The petitioner has challenged an order passed by learned III Jt. Civil Judge, Senior Division, Latur dated 05.12.2024, by which application of the petitioner to permit her to cross-examine the sole respondent came to be rejected. Respondent No.1 has applied for heirship certificate bearing M.A. No. 972 of 2023, claiming to be wife of deceased son of present petitioner. It is specific case of the petitioner that her son never married to the respondent. In view of this objection, the learned Trial Judge directed the respondent and the petitioner to file evidence affidavit and documents. Pursuant to said order, the respondent filed her affidavit in lieu of evidence. The petitioner, therefore, requested for permission to cross-examine the respondent by filing application below Exh.31. The learned Trial Court by way of the impugned order held that the proceeding is of summary in nature and rejected the application thereby denying permission to cross-examine the witness. The learned Advocate points out Rule 4 of the Administration of Estates Regulation, which reads as under :-

"4. Objection appearing, to be examined and recognition given or refused accordingly.

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.

If question is complicated or difficult, matter to be left for adjudication.

- 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."

. He thus submits that right to cross-examine is a valuable right. Looking to the nature of proceeding and the objection raised by the petitioner to the very nature of relation of the respondent with her son, it was necessary to allow her to cross-examine the witness.

02. This Court finds that case is made out to issue notice and to grant ad-interim relief.

03. Hence, issue notice to the respondents, returnable on 17.03.2025.

04. There shall be ad-interim relief in terms of prayer clause (C) till next date.

[KISHORE C. SANT, J.]