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

35 WRIT PETITION NO. 3467 OF 2025

SITARAM RODAMAN MARAG DIED THROUGH LRS VITHAL SITARAM
MARAG

VERSUS

FULSING MOHAN KAKARWAL AND OTHERS

Mr.N.D. Sonavane, Advocate for the petitioner.

CORAM : KISHORE C. SANT, J.
DATE : 18.03.2025

PC :-

01. Heard learned Advocate for the petitioner. An order passed by learned District Judge-2, Chhatrapati Sambhajnagar dated 20.02.2025 below Exh.7 in Civil M.A. No. 609 of 2024 is under challenge. By the impugned order, the learned District Judge-2 rejected an application of the petitioner seeking injunction against the respondents/original defendants from creating third party interest on the land sold by them to the extent of 20R, pending delay condonation application and appeal before the District Judge.

02. It is case of the petitioner that the petitioner happens to be legal heir of one Sitaram Rodaman Marag. The respondents wrongly filed application i.e. MARJI No. 72 of 2005, seeking heirship certificate in their favour showing as legal heirs of deceased Gajarabai Fulsing Kakarwal, who is aunt of the petitioner. As per case of the petitioner, the property was belonging to Daulat Hiranman Kakarwal, who was having one son – Fulsing and one daughter – Gendabai. Wife of Fulsingh, namely, Gajarabai also died issueless on 15.06.2004. Present petitioner happens

to be son of Gendabai, who died on 07.08.1992, leaving behind Sitaram i.e. father of present petitioner, Gabarsingh, Ambarsingh and Bhavlal. Ambersingh died in 2009. Bhavlal never shown interest in the property and only Sitaram was looking after the property and was fighting for the rights. After Sitaram, present petitioner is the only heir.

03. On the above ground, the petitioner filed application for revocation of heirship issued in the name of respondent Fulsingh. On his application, said certificate came to be issued by 3rd Joint Civil Judge, (S.D.), Aurangabad by order dated 25.09.2013. Against that appeal was filed by Fulsingh. Same also came to be dismissed bearing RCA No. 232 of 2013 by order dated 21.03.2016. The application filed by Sitaram came to be allowed and he is given heirship certificate. Since Sitaram also died, the heirship certificate came to be granted in favour of present petitioner on 18.08.2022. He thus claims right to the suit property and filed a suit for cancellation of sale-deed executed by Fulsingh in favour of respondent Nos. 2 and 3 i.e. Bhagwan and Ganesh. The Trial Court, however, dismissed suit bearing RCS No. 107 of 2013 by order dated 03.08.2024, mainly holding that the petitioner has failed to prove that he is legal heir of Gajarabai. Another ground is that the petitioner failed to prove his possession over the suit property. The petitioner, therefore, filed appeal along with application for condonation of delay. During that period, respondent Nos. 2 and 3 sold 20 R land out of suit property admeasuring 60 R. The petitioner, therefore, filed application below Exh.7 seeking injunction from creating third party interest and not to take mutation entry. The delay of 38 days is also condoned and on the same day application Exh.7 came to be rejected. Thus, the petitioner is

before this Court.

04. Considering the above, this Court finds that a case is made out to issue notice.

05. Issue notice to respondent Nos. 1 to 3 only, returnable on 10.06.2025.

06. In the meantime, there shall be ad-interim relief in terms of prayer clause (C).

[KISHORE C. SANT, J.]