

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIRCUIT BENCH AT KOLHAPUR  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.11740 OF 2025**

Seema Prakash Ausekar

Age: 63 years, Occ.: Housewife,

R/at: Plot No.25, Solapur Nagar,

Takali Road, Pandharpur, Dist- Solapur.

.....Petitioner

Versus

1. Lata Prakash Ausekar

Age: 45 years, Occ.: Housewife,

R/at: Village Ranjhani,

Taluka Pandharpur, Dist- Solapur.

2. Kiran Vitthal Bhosale

Age: 58 years, Occ.: Agriculturist,

R/at: Bhosale Chowk, Tal- Pandharpur

Dist- Solapur

3. Mayuri Parag Mahajan

Age: 45 years, Occ.: Service,

R/at: Sahakar Nagar No.2, Pune.

4. Mandar Prakash Ausekar

Age: 42 years, Occ. Service,

5. Mangesh Prakash Ausekar

Age: 40 years, Occ. Service,

Petitioner No.3 & 4 both R/at: Plot No.25,

Solapur nagar, Takali Road, Pandharpur,

Dist-Solapur.

.....Respondents

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Mr. Kushal N. Kulkarni, for the Petitioner.

Mr. Hrishikesh M. Khupsare, for Respondent No.2.

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**CORAM : S. G. CHAPALGAONKAR, J.**

**DATED : 11<sup>th</sup> NOVEMBER, 2025.**

**JUDGMENT:-**

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.

2. The petitioner takes exception to order dated 03.09.2025 passed by Civil Judge Senior Division, Pandharpur below Exhibit-150 in Civil Miscellaneous Application No.28/2021, whereby application filed by respondent no.2 seeking impleadment in Civil Miscellaneous Application No.28/2021 has been allowed.

3. The petitioner, respondent nos.3 to 5 filed Civil Miscellaneous Application No.28/2021 for grant of heirship certificate in respect of movable and immovable properties owned by Late Prakash Ausekar i.e. husband of petitioner and father of respondent nos.3 and 5. The respondent no.2 filed an application in Civil Miscellaneous Application seeking his impleadment as respondent claiming that he has right in one of the property for which heirship certificate has been claimed by petitioner. The Trial Court allowed said application observing that respondent no.2 claims to be owner of one of the property by virtue of sale deed executed by deceased Prakash and, therefore, his right and interest is involved in proceeding.

4. Mr. Kushal Kulkarni, learned Advocate appearing for petitioner submits that sale deed executed by deceased Prakash in favour of respondent no.2 has been declared as illegal vide decree passed in Regular Civil Appeal No.140/2015 filed by petitioner. Although respondent no.2 filed Second Appeal before this Court, there is no interim order. Therefore, respondent no.2 cannot assert any right in

property for which heirship certificate is sought. He would further submit that even otherwise in proceeding for grant of heirship certificate, except heirs of deceased, nobody can seek intervention, as heirship certificate does not confer any right or title in respect of properties mentioned in application, but it only recognizes that applicants, who are claiming heirship certificate are heirs of deceased. In support of his contentions he relies upon observations of this Court in case of *Group Grampanchayat, Sasavane Vs. Sunanda Shamrao Bandishti and Others*<sup>1</sup>.

5. Per contra, Mr. Hrishikesh Khupsare, learned Advocate appearing for respondent no.2 supports impugned order.

6. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that petitioner alongwith respondent nos.3 to 5 instituted proceeding for grant of heirship certificate under provisions of Bombay Regulation Act for their recognition as heirs of late Prakash. The application for recognition of person as heir of deceased can be made under Regulation. Clause Nos.7 and 8 of Regulation reads thus:

*“7. First : Recognized heirs, etc., competent to manage property:*

*An heir, executor or administrator, holding the proper certificate, may do all acts and grant all deeds competent to a legal heir, executor or administrator, and may sue and obtain judgment in any Court in that capacity.*

*Second : But recognition gives no title to property:*

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<sup>1</sup> 2011 (2) Mh.L.J. 424.

*But, as the certificate confers no right to the property, but only indicates the person who, for the time being, is in the legal management thereof, the granting of such certificate shall not finally determine nor injure the rights of any person; and the certificate shall be annulled by the Zila Court, upon proof that another person has a preferable right.*

*An heir, executor or administrator, holding a certificate, shall be accountable for his acts done in that capacity to all persons having an interest in the property, in the same manner as if no certificate has been granted.*

8. *Refusal of a recognition no judgment against claim of applicant:*

*The refusal of a certificate by the Judge shall not finally determine the rights of the person whose application is refused, but it shall still be competent to him to institute a suit for the purpose of establishing his claim.”*

7. In case of ***Aloysius Manuel D'souza and Ors. Vs. Mary Kamala William Manuel D'souza***<sup>2</sup>, Division Bench of this Court held that heirship certificate does not establish the right of a party in property of the deceased by itself. The right, if any, of a person claiming ownership in the property of the deceased are not taken away by grant of an heirship certificate to an heir. On the other hand, clause 7 makes it clear that heirship certificate holder is accountable to all persons having an interest in the property for the acts done by him. Based on the heirship certificate simplicitor the heirship certificate holder cannot be said to have acquired any right, title or interest in the estate of the deceased.

8. In light of aforesaid legal position, even it is assumed that respondent no.2 has semblance of any right in property left behind by

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2 2006 (6) Bom. C.R. 56.

late Prakash on the basis of sale deed executed by him, respondent no.2 can establish his own right in independent proceeding. The claim for grant of heirship certificate by petitioner and respondent nos.3 to 5 is only for their recognition as heirs of deceased and as observed by Division Bench of this Court in case of ***Aloysius Manuel D'souza and Ors.*** (supra) even after grant of certificate they would be accountable to all persons having interest in property for acts done by deceased.

9. In light of aforesaid exposition of law, respondent no.2, who is outsider to family of petitioner and respondent nos.3 to 5, cannot claim any right to implead himself as party in proceeding for grant of heirship certificate. The impugned order depicts that Trial court has completely misconceived scope of proceeding before him and permitted impleadment of respondent no.2, observing that respondent no.2 may have some right in property for which heirship certificate is sought. In that view of matter, impugned order cannot be sustained in law.

10. In result, Rule made absolute in terms of prayer Clause (b).

**(S.G. CHAPALGAONKAR, J.)**