

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 640 OF 2024

Dwayne Werner Martins through His Constituted
Attorney Rowena Sandra Diana Pires ...Petitioner

Martins Joyce Manual alias Joyce Manual Martins
alias Joyce Manuel Martins ...Deceased

Adv. Hrushi Narvekar a/w Seema Hunnurkar i/by Seema Hunnurkar & Associates
for the Petitioner.
Adv. Granville Gomes a/w Reshma Kurle for the Respondent/Objector.

CORAM : ARIF S. DOCTOR, J.
DATE : 18TH MARCH, 2025

P.C.:-

1. The present Petition is filed for issuance of a Legal Heirship Certificate in terms of the provisions of Bombay Regulation VIII of 1827. The Petitioner is the son of the deceased one Martins Joyce Manual alias Joyce Manual Martins alias Joyce Manuel Martins, who passed away on 24th November, 1993. The Petition was opposed by one Manuel Francisco Antonio Martins, who is the father of the Petitioner and husband of the deceased by filing an Affidavit. However, in the Affidavit, the Objector has admitted to the fact that the Petitioner is a legal heir of the deceased. The only contention raised by the

Objector is that the Petitioner will use the Legal Heirship Certificate for the purpose of dealing with the property of the deceased.

2. In dealing with this contention, Mr. Narvekar, Learned Counsel for the Petitioner placed reliance upon a judgment in the case of ***Ganpati Vinayak Achwal***¹ which while construing the provisions of Bombay Regulation VIII of 1827 specifically held as follows:

“5. The position of law that emerges from the above provisions is that, an heirship certificate does not bestow the status of an heir upon a person. Grant of such a certificate is only a formal recognition of his existing status as an heir. An heir or executor or legal administrator, by his such status, can assume management of the property of the deceased even without a formal recognition by the Court. A person may obtain heirship certificate in any of the three situations i.e. (i) if he so desires (ii) where his right as an heir is disputed, and (iii) in order to give confidence to the persons in possession of or indebted to the estate and to deal with them. Thus grant of heirship certificate is solely, for the convenience of the heir. Beyond that, it is of no significance. The rules also indicate that, it is mandatory for the Court to issue an heirship certificate, if after publication of citation, no objector comes forward within one month from the date of publication. In that case, the Court shall forthwith receive such proof as may be offered of the right of the person making the claim, and if satisfied, shall grant a certificate in the prescribed form declaring him the recognized heir of the deceased. The scope of such enquiry is limited to ascertain the claim of heirship of the applicant. The petitioner's claim and the impugned order are required to be appreciated against the above legal position.

1 2014(6) Mh.L.J.

6. In view of the above legal position, I find that Mr. Badgujar is right in his submission that, the trial Court lost sight of the fact of the purpose of obtaining heirship certificate. It is not for management of the property as already noted above. It is essentially a formal recognition of status of a person. Therefore, physical health or strength of the petitioner was not a factor relevant to be taken into consideration for grant or refusal of the heirship certificate. The only relevant consideration was, whether the applicant establishes that he is the heir of a person in respect of whom, he seeks heirship certificate. If no objector comes forward as provided by Rule-3 of Chapter-I of the Regulation, the Court must grant certificate to the applicant. This view is fortified by the decision of Single Judge of this Court, relied upon by Mr. Badgujar. By the judgment and order dated 16th March, 2011 passed in Writ Petition No. 302 of 2011 by Nagpur Bench of our High Court in the case of Vilas Sadanand Sapre (Mentally Challenged) through Guardian Sister Sau. Anuradha Dhananjay Bhate and anr. Versus. The Civil Judge, Senior Division, Amravati. The petitioner in that case was denied heirship certificate on the ground that, he was mentally challenged. The trial Court had held that, unless the next friend and guardian, who had filed the application was appointed as an 'Guardian' through the court of competent jurisdiction under the provisions of the Mental Health Act, she could not act on behalf of the petitioner and file application. This Court, looking into the purpose of issuance of heirship certificate under the Regulations held that, for considering such an application, the Court is not required to determine the title of the deceased or the persons claiming heirship certificate to any property. The Court is only required to consider whether the persons claiming heirship certificate is the heir of the deceased."

3. Basis the above, Mr. Narvekar points out that the grant of a Legal Heirship Certificate is solely for the convenience of the legal heir and beyond that the same has no significance. He points out that the apprehension of the Respondent is entirely misplaced inasmuch as the grant of Legal Heirship

Certificate is not for the management of the property as held in the judgment above and is only a formal recognition of the status of the present Applicant as also the other legal heirs of the deceased.

4. Having due regard to the position of law as laid down in the aforesaid judgment and given that today if the Objector admits that the Applicant is in fact a legal heir of the deceased, the Petition must be allowed. Hence, the Petition is allowed in terms of prayer clause (a) which reads thus:

“a. This Hon'ble Court be pleased to issue a Legal Heirship Certificate to the Petitioner under the provisions of Bombay Regulation VIII of 1827 certifying that the Petitioner, alongwith the heirs mentioned para no. 4 herein above are the only heirs and legal representatives of the deceased.”

5. The Miscellaneous Petition is accordingly disposed of.

(ARIF S. DOCTOR, J.)