



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1379/2023

Sheikh Taimur s/o Sheikh Husain .Vs. Shri Gopinathbaba and Vairagidev Sansthan,
Puada through its President

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

Court's or Judge's orders

Ms S. Deshpande, Advocate for petitioner.
Mr. P. S. Raut, Advocate for respondent.

CORAM : **ANIL L. PANSARE, J.**

DATE : **APRIL 21, 2025**

Heard.

2. Question is whether in the proceedings filed under the provisions of the Bombay Regulation VIII of 1827 (for short the, "Regulation of 1827"), by the petitioner claiming legal heir certificate, presence of respondent No.1 – Trust is necessary? The Trial Court, by the impugned order dated 24.08.2022, mentioned about the dispute between the parties in respect of the immovable property being Field Survey No.61/2, Gat No.315, situated at village Pusda, Tahsil and District Amravati. On the basis of such dispute, respondent sought intervention on the ground that he is directly connected with the outcome of heirship application. The Trial Court found substance in the said plea and, accordingly, allowed the respondent to intervene in the proceeding.

3. To my mind, the Trial Court committed serious error of law inasmuch as it failed to recognize the well settled principle that heirship certificate under the Regulation of 1827 does not recognize the rights of heir over immovable properties of the deceased. In that sense, even if heirship certificate is granted in favour of petitioner, it will be impermissible for him to claim and establish rights over immovable properties left behind by the deceased only on the basis of legal heirship certificate. In other words, rights over immovable

property can be adjudicate on the basis of admissible piece of evidence, if available with the persons like the petitioner, who is seeking heirship certificate.

4. Merely because the respondent has some interest in the property bearing Survey No.61/2 that by itself will not enable him to intervene in the proceeding. As stated earlier, heirship certificate is not dependent on the rights in the immovable property. Rather, it is not meant for recognition of rights in the immovable property left behind by the deceased. What is recognized is that the person claiming heirship is the only legal heir of the deceased for which independent inquiry will be conducted by the Court below.

5. That being so, presence of respondent was not necessary. The impugned order is thus unsustainable. The writ petition is accordingly allowed. Impugned order dated 24.08.2022, passed below Exh.-21 by 12th Joint Civil Judge Junior Division, Amravati in R.M.J.C. No.742/2020 is quashed and set aside. Application for intervention is rejected.

The writ petition is disposed of in the above terms. No order as to costs.

(Anil L. Pansare, J.)