



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

WRIT PETITION NO.1472/2024

Smt. Sindhubai @ Sindhutai Sadashiv Paithankar
Vs.
Santosh Sadashiv Paithankar and others

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

Court's or Judge's orders

Shri R.G. Kavimandan, Advocate for petitioner
Shri P.S. Chavhan, Advocate for respondents

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 29/01/2025

Heard learned Counsel for the petitioners.

2. The petitioner by this petition challenged the order passed below Exhibit-1 in Misc. Civil Application No.04/2022 dated 01.02.2023 and Civil M.A. No.53/2023 below Exhibit-1 dated 30.11.2023. The petitioner applied for grant of legal heir certificate in respect of the property held by her husband Sadashiv Budhaji Paithankar under the Bombay Regulations VIII of 1827.

3. It is the contention of the petitioner/applicant that she was legally wedded wife of Sadashiv Paithankar and she is the only legal heir of the property and hence applied for legal heirship. In the said application, the petitioner also placed reliance on admission given by late Sadashiv Paithankar in his reply in proceeding for maintenance that he performed marriage with the petitioner 30 years back

and the marriage is still in existence. However, the learned Civil Judge Senior Division, Pusa, District Yavatmal, rejected the application for grant of legal heir certificate in favour of petitioner. As there was suit pending bearing RCS No.09/2020, which was filed by the petitioner herself, however, this fact is not disclosed in her application. She has added defendant Nos.1 to 4 in the application as well as suit who are alleged to be illegitimate children of Sadashiv Paithankar. Therefore, the learned Trial Court rightly filed application with liberty to move the application after conclusion of pending Civil Suit for partition.

4. The learned Counsel for respondents drawn my attention to the Bombay Regulations VIII of 1827 wherein Chapter-I is in regard to the Rules for the Recognition of Heirs, Executors and Administrators when there is Competent Claimant. In paragraph No.2 Rule 4, it is specifically mentioned that:

“if from the evidence adduced, it appears that 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”.

In view of this provision, the learned Trial Court rightly filed the application as applicant herself filed application as well as suit and she did not disclosed that suit is filed by her in Civil Court.

5. The learned Counsel for petitioner relied on *Vandana Bhimrao Jadhav and ors. Vs. Sagar Bhimrao Jadhav* reported in *2014 (6) Bom.C.R. 759*, in support of his contention that when earlier marriage was in existence, the second marriage is admittedly void. This fact can be effectively adjudicated by leading evidence. The respondent Nos.1 to 4 appears to be illegitimate children of Sadashiv Paithankar. The suit between the parties is pending, as there is complicated question of facts involved, the learned Trial Court rightly passed the order.

6. In my view, both the orders Exhibit-1 in Misc. Civil Application No.04/2022 dated 01.02.2023 and order below Exhibit-1 in Civil M.A. No.53/2023 dated 30.11.2023 are legal. There is no perversity or error in the order passed, and those are passed as per the provisions of law.

7. As such the Writ Petition is dismissed.

JUDGE

R.S. Sahare