



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 262 OF 2025

Sonali Trushant Walde, aged about 32 years,
Occu: Household, R/o B-905, Samrat Gokul Dham,
Hirawadi, Nashik-422003.

PETITIONER

VERSUS

Babita Girish Badole, aged about 28 years,
Occu: Household, R/o Delanwadi Ward, Bramhapuri,
Tahsil Bramhapuri, District Chandrapur.

RESPONDENT

Shri R.S. Kalangiware, Counsel for the petitioner.
Shri A.A. Dhawas, Counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH THE ARGUMENTS WERE HEARD : AUGUST 20, 2025

DATE ON WHICH THE JUDGMENT IS PRONOUNCED: OCTOBER 16, 2025

JUDGMENT

RULE. Rule made returnable forthwith. Heard finally by consent of the learned counsels for parties.

2. This writ petition under Article 227 of the Constitution of India deals with challenge to the order dated 20.12.2024 passed by the trial Court, rejecting the petitioner's application under Order I Rule 10 of Code of Civil Procedure, 1908 (for short, 'the Code').

3. The factual set up, in which the instant controversy arose, is succinctly put below :-

(i) The petitioner is real sister of deceased Girish Badole and daughter of Vijay and Kunda Badole. The respondent is wife of deceased Girish.

(ii) The dispute in between the sister and wife of deceased Girish arose in the background of a devastating car accident which took place on 16.04.2023. In the said car accident, the mother, brother and sister of the petitioner died on 16.04.2023 itself, whereas the father of the petitioner died on 22.04.2023.

(iii) Deceased Girish was having a life insurance policy bearing number 990660510, from Life Insurance Corporation of India, in which mother of the petitioner was a nominee.

(iv) After death of Girish, his wife, i.e. respondent herein filed an application under section 372 of Indian Succession Act, 1925 before the Court of Civil Judge (Senior Division) Chandrapur, which is registered as M.J.C. No. 369 of 2023 for grant of succession certificate, wherein she claimed for the amount under the said policy. In this application, the respondent added herself as applicant and nobody was arrayed as non-applicant/respondent.

(v) During pendency of the said succession proceedings, the petitioner herein filed an application at Exhibit 16 under Order I Rule 10 of the Code claiming that she is entitled to be joined as necessary party. By this application, the petitioner claimed that after the death of deceased Girish, his mother being his Class 1 Legal heir acquired right and share in all the properties of deceased Girish and after her death, all her legal heirs, including the petitioner acquired right and share in the movable and immovable properties of deceased Girish through the share of his nominee i.e. his mother deceased Kunda.

(vi) The applicant in the succession proceedings i.e. the respondent herein filed reply to the intervention application and categorically denied any kind of right of the intervener. As regards the claim of the intervener of having a right in the property of deceased Girish, it was stated that the petitioner not being Class 1 heir of deceased Girish, was not entitled to assert any right and as such, had no locus to file the application, much less to be a necessary party.

(vii) The trial Court passed order dated 20.12.2024 below Exhibit 16 and the application filed by the petitioner-Intervenor came to be rejected.

(viii) Assailing this order, the petitioner has filed the instant petition invoking supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

4. Shri R.S. Kalangiwale, learned counsel for the petitioner strenuously argued that the impugned order is patently illegal and unsustainable in law. He submitted that the petitioner being daughter of deceased Kunda had got a right in the property of deceased Girish to the extent of share of late Kunda in view of Section 10 of the Hindu Succession Act, 1956 (for short, 'the Act of 1956'). By inviting attention to Sections 8, 10 and 15 of the Act of 1956, learned counsel for petitioner submitted that the petitioner had got a right in the share of her deceased mother and she cannot be deprived of the right which accrued to her by operation of law. He therefore submitted that the petitioner being a necessary party to the succession proceedings, the trial Court has utterly failed to consider the purport of the provisions of Sections 8, 10 and 15 of the Act of 1956 and the impugned order is grossly unsustainable.

5. Per contra, Shri A.A. Dhawas, learned counsel for the respondent vehemently opposed the petition. He submitted that the petitioner is not at all a necessary party to the succession proceedings. He submitted that the petitioner's brother deceased Girish and mother deceased Kunda had expired in the same accident and there is no question of accrual of any right in favour of the petitioner. By inviting attention to the documents of the final report and the First Information Report of the said accident, he attempted to submit that the mother of the petitioner had died before the brother. He submitted that considering the time and sequence of death of

the mother and brother of the petitioner, the petitioner cannot claim any right since her mother had predeceased her brother. He, therefore, submitted that since mother Kunda had predeceased her brother Girish, the petitioner is not entitled to claim any right in her share. He invited my attention to the provisions of Section 21 of the Act of 1956 which deals with presumption in cases of simultaneous deaths. He, therefore, submitted that there is no conclusive material about petitioner's right to claim share in the property of her mother. As such, he submitted that the petitioner is not a necessary party in the succession proceedings.

6. Rival contentions now fall for my consideration.

7. It is crucial to note that the controversy involved in the instant petition is with respect to entitlement of the petitioner to participate in the succession proceedings initiated by the respondent, i.e. wife of deceased Girish. The petitioner has claimed herself to be a necessary party to the succession proceedings based on a right in her favour to the extent of share of her mother. None of the parties had laid any evidence with respect to the fact as to who had predeceased the other, i.e. mother or son and, therefore, the said controversy is not yet adjudicated. Thus the primary issue which falls for my consideration is whether the petitioner need to be allowed to participate in the succession proceedings on the basis of a possible right claimed by her in the property of the deceased to the extent of her mother's share.

8. Undisputedly, the petitioner is not a Class I heir of deceased Girish, who has died intestate. As regards the right claimed by the petitioner in the property of deceased to the extent of share of her mother, the provisions of the Act of 1956 needs to be given due consideration. The

provision with respect to general rules of succession in the case of a male is provided in Section 8 of the Act of 1956 which is reproduced below:-

“8. General rules of succession in the case of males.— The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:-

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.”

9. The provision with respect to the distribution of property amongst heirs in Class 1 of the schedule is contained in Section 10 of the Act of 1956, which is reproduced below:-

“10. Distribution of property among heirs in class I of the Schedule.— The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:--

Rule 1.— The intestate’s widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2.— The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3.— The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4.— The distribution of the share referred to in rule 3:--

(i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widow together) and the surviving sons and daughters get equal portions; and the branch of his pre-deceased sons gets the same portion;

(ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.”

Apart from these two provisions, another relevant provision which needs to be given due consideration is with respect to the general rules of succession in the case of female Hindus, which is provided in section 15 of the Act of 1956, which is reproduced below:-

“15. General rules of succession in the case of female Hindus.—
(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—
(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
(b) secondly, upon the heirs of the husband;
(c) thirdly, upon the mother and father;
(d) fourthly, upon the heirs of the father; and
(e) lastly, upon the heirs of the mother.
(2) Notwithstanding anything contained in sub-section (1),—
(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter), not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and
(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.”

10. Thus, while considering Section 8 of the Act of 1956, it is clear that the property of a male Hindu dying intestate shall devolve firstly upon the heir as specified in Class I of the Schedule. After considering the Schedule to the Act of 1956 and considering the fact that deceased Girish had died intestate, mother of the petitioner, viz. Kunda is a Class 1 heir along with the respondent who is wife of deceased Girish. Further, in view of Section 10 of the Act of 1956, the remaining sons, daughters and mother of the intestate shall take one share and therefore the mother of

petitioner i.e. deceased Kunda became entitled to the property of her son Girish. The contention of the petitioner in this regard is that Girish, the brother of petitioner has predeceased her mother, and therefore, after his death the succession opened and as such all the Class 1 legal heirs including his mother acquired right in the property of deceased Girish. After giving thoughtful consideration to the provisions of Section 8 and 10 of the Act of 1956 with respect to facts of the instant case and on consideration of Section 15 of the Act of 1956, it becomes clear that *prima-facie* the petitioner can raise a claim that she had got right in the property of her mother who also died intestate, which will be tested during adjudication.

11. As such, in view of the above provisions of the Act of 1956, it *prima facie* appears that the petitioner is entitled to raise a claim and assert a right in the property of deceased Girish at least to the extent of share of her mother deceased Kunda.

It is also crucial to note that there is no evidence as on today about the time and sequence of death of the brother and mother of the petitioner. Therefore, learned counsel for respondent has invited my attention to Section 21 of the Act of 1956, which contains a provision with respect to presumption in cases of simultaneous deaths. For further consideration of the contentions in this regard, the provision of Section 21 of the Act of 1956 is reproduced below:-

“21. Presumption in cases of simultaneous deaths.— Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other, then, for all purposes, affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.”

A perusal of this provision clearly shows that in case two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other, then, for all purposes, affecting succession to property, it shall be presumed, until the contrary is proved that the younger survived the elder. In view of this presumption, learned counsel for respondent submitted that in view of documents on record, it appears that the mother of the petitioner had predeceased her brother, and therefore, the petitioner cannot claim any right in the property of the brother, even to the extent of share of her mother.

12. Even while considering this argument, it has to be noted that the presumption as provided under Section 21 of the Act of 1956 is not a conclusive presumption and it is qualified by the words until the contrary is proved. As such, until the evidence is laid to establish the time and sequence of death of deceased Girish and Kunda, nothing can be concluded as to who has predeceased whom. Thus, at this stage, in absence of any evidence to conclusively establish that petitioners mother had expired before her brother, the petitioner cannot be deprived of her right to assert a claim over the property of her deceased brother to the extent of share of her mother. It is pertinent to note that the petitioner has contended in her application that her brother had expired while on way to the hospital and mother had expired in the Government Hospital premises. As such, the petitioner has come up with a case that her brother has predeceased her mother. Despite repetition, it is mentioned here that no evidence is yet laid to conclusively prove the sequence of death of

those persons. In view of the above factual and legal aspects, I am of the firm view that the petitioner has been able to establish a *prima facie* right to participate in the succession proceedings.

13. While considering the contentions of the petitioner to intervene in the succession proceedings, the position of law with respect to provisions of Order I Rule 10 of the Code needs to be considered. As regards the position of law, it is fruitful to refer to the authoritative pronouncement of the Hon'ble Supreme Court in *Kasturi Versus Iyyamperumal & Others* [(2005) 6 SCC 733], on which the counsel for petitioner has heavily relied. While dealing with the provisions of Order I Rule 10(2) of the Code, the Supreme Court observed that the test to determine as to who is a necessary party is that there must be a right to some relief against such party in respect of controversies involved in the proceedings; or no effective decree can be passed in the absence of such party. By inviting attention to paragraph 13 of this judgment learned counsel for the petitioner submitted that the petitioner is a necessary party to the succession proceedings and her right to participate in such proceedings cannot be taken away. Said paragraph 13 is reproduced below:-

“13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.”

14. Further, as regards the issue as to whether the petitioner can be allowed to intervene in the proceedings with respect to claim for insurance policy, counsel for petitioner has relied upon the judgment in *Jilubhai Nanbhai Khachar & Others Versus State of Gujarat & Another* [1995 Supp (1) SCC 596] and submitted that the amount of life insurance policy is also a property in which the petitioner is entitled to stake her right. It must however be observed that as regards the right of petitioner to the property of her deceased brother, the entitlement to the amount of life insurance policy, will have to be adjudicated by considering provisions of Section 39 of the Insurance Act, 1938 and the position of law laid down in this regard. In the facts of this case, in view of semblance of right, shown by the petitioner, at this stage, she cannot be deprived from participating in the succession proceedings.

15. On careful consideration of the contentions advanced by the counsel for the respective parties, there is no manner of doubt that the petitioner cannot be deprived of her right to participate in the succession proceedings. Another issue, as to whether the petitioner would have a share in the property of deceased Girish, either to the extent of share of her mother or otherwise, would finally become clear after the adjudication of the controversy. At this stage, looking into the case for the purpose of entertaining application under Order I Rule 10 of the Code, I am of the firm opinion that the petitioner's application ought to have been allowed by the trial Court. While passing the impugned order, trial Court has only observed that the petitioner, not being a Class I heir of deceased Girish,

cannot have any share in the property of the deceased. However, the impugned order is passed by completely ignoring the purport of the provisions of Sections 8, 10 and 15 of the Act of 1956. As such, the impugned order is apparently unsustainable and deserves to be quashed and set aside.

16. In view of the abovementioned factual and legal aspects, the instant writ petition succeeds. The impugned order dated 20.12.2024 is quashed and set aside. The application filed by the petitioner under Order I Rule 10 of Code of Civil Procedure at Exhibit 16 in M.J.C. No.369 of 2023 is allowed. Rule is made absolute in above terms. No costs.

(PRAFULLA S. KHUBALKAR, J.)