



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

937 WRIT PETITION NO.488 OF 2025

Shantabai Murgappa Kalemale Swami

VERSUS

Rani Manmath Kalemale

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Advocate for Petitioner : Mr. S.V. Natu

Advocate for Respondents : Mr. S.B. Gastgar

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : March 24, 2026

**ORDER :-**

1. Present writ petition takes exception to the order dated 14.8.2024 passed below Exhibit-1 and order dated 05.12.2024 passed below Exhibit-31 in Miscellaneous Application No.972 of 2023.

2. Mr. Natu, learned advocate appearing for petitioner submits that respondent herein filed Miscellaneous Application No.972 of 2023 under the section 370 of Indian Succession Act, 1925 contending that she was wife of the deceased Manmath Kalemale and she is only surviving legal heir. The petitioner, who is mother of deceased Manmath, filed her objection stating that Manmath has living wife. The respondent

is unconcerned with him. Marriage of Manmath with Aruna subsists till his death.

3. Respondent filed her evidence affidavit in the proceeding. Petitioner sought permission to cross-examine her, however, learned Judge of the Trial Court refused such permission on the ground that proceeding under Indian Succession Act is summary in nature and cross-examination cannot be permitted. According to Mr. Natu, the proceeding under Indian Succession Act is required to be decided on the basis of evidence. The cross examination would be necessary in such cases.

4. Perusal of proceeding before Trial Court indicates that application filed under section 370 by respondent has been objected and contested by the petitioner. The claim of respondent that she is only legal heir of deceased Manmath is specifically denied with further contention that Manmath had living wife. In the wake of aforesaid controversy, if evidence affidavit is filed by the petitioner, it would be unfair to refuse permission to cross-examine. Mr. Natu has rightly relied upon provisions contained under Chapter 1 of Bombay Regulations Act, of 1927. Clause no.4 stipulates objection shall be

summarily investigated and grounds of objections at one hand and of right claimed on the other hand, examining such witnesses or other evidence as may be adduced by the parties, and either grant or refuse a certificate, as the circumstances of the case may require. If the evidence adduced shows that the question as to dispute between parties is of 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.

5. Looking to the aforesaid procedure contemplated under the Bombay Regulation Act, it is imperative that in case contest is raised, permission to cross-examine has to be accorded. Although, procedure is summary in nature, cross-examination of witnesses would be imperative where there is contest to the status of parties claiming succession certificate. Even in appropriate cases, it is open for the Court to defer the decision in the proceeding of succession certificate till decision of the issue in substantive proceeding.

6. In light of aforesaid exposition of law, this Court finds that impugned order cannot be sustained in law. Hence, the

writ petition is **allowed** in terms of prayer clause “**B**” and **disposed of**.

( S. G. CHAPALGAONKAR, J. )

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