

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

MISCELLANEOUS PETITION NO.571 OF 2026

Shailesh Mahadev Botare, Age 46 years,
Occ.Service, r/o.Room No.29, Plot No.216,
Suyog CHS, Near BMC Schol, Charkop Sector 2,
Kandivali, Mumbai-400067.

Petitioner

Malati Majadev Botare @ Bothare

Deceased

Mrs.Prachi Raj Mhatre, Advocate for Petitioner.

CORAM: AARTI SATHE, J.

DATE: 15th June 2026

P.C.

1. Heard Mrs.Prachi Mhatre, learned counsel for the Petitioner.
2. By this petition filed under the provisions of Bombay Regulation VIII of 1827, the Petitioner seeks issuance of legal heirship certificate in favour of the surviving legal heir/s of the deceased.
3. The deceased was the mother of the Petitioner who expired on 12th July 2018. A copy of her death certificate is annexed to the petition as Exhibit-A-1. It is stated that at the time of her demise, the deceased was residing and had a fixed place of abode at Room no.29, Plot No.216, Suyog CHS, Near BMC School, Charkop Sector 2, Kandivali West, Mumbai-400 067 admeasuring 30 square meters. It is also stated that the deceased died intestate without leaving behind any testamentary writing or will.

4. It is also submitted that prior to the name of the deceased being entered into the nomination form, the property in question stood in the name of the husband of the deceased who died on 8th August 2011. Post the demise of the husband, the name of the deceased and the Petitioner had been entered in the nomination form which is annexed at Exhibit-E-1. In these circumstances the property in question has devolved upon the deceased. It is stated that the deceased has died intestate leaving behind no will or writing.

5. In paragraph no.4 of the petition the Petitioner has given information about surviving legal heirs i.e. the Petitioner herein. It is specifically stated that the parents of the deceased have pre-deceased her. The Petitioner further submits that since he is the only surviving legal heir, there is no consent affidavit of any other legal heir, and in lieu thereof, the requirement of service of proclamation/citation/notice is not to be made.

6. It is stated that the legal heirship certificate is required to be produced before the concerned authorities in order to complete legal formalities so as to enter the name of the Petitioner as the sole legal heir of the deceased in all the official records.

7. It is stated that no other petition for heirship certificate, succession certificate, probate or letters of administration with or without Will have been filed. There is, therefore no impediment to the grant of the relief.

8. As far as prayer for condonation of delay is concerned, learned counsel for the Petitioner has placed reliance on the decision of this Court in **Ganpati Vinayak**

Achwal¹, and stated that since the cause of action is continuous, delay should be condoned. This Court in Ganpati Vinayak Achwal (supra) has held that the right to apply is a continuous right which is capable of being exercised as long as the object of the trust exists or any part of the trust, if created, remains to be executed. Being a continuous right, it can be exercised at any time after the death of the deceased, as long as the right to do so exists. The right to apply may, therefore, accrue not necessarily within 3 years from the date of the deceased's death but when it becomes necessary to apply, which may be any time after the death of the deceased, be it after several years.

9. Similar view was taken by this Court in **Vasudev Daulataram Sadarangani Vs. Sajni Prem Lalwani**², and by Madras High Court in **S. Krishnaswami, E. Devarajan v. E. Ramiah**³. In Vasudev Daulataram (supra), this Court held that Limitation Act 1963, would not apply in the matter of grant of probate or letters of administration as the right to apply is recurring one. Relevant excerpts of the judgment in Vasudev Daulatram (supra) are as under :

“8. As regards the applicability of section 137 of the Limitation Act to the petitioners application, Mr. Badgujar relying upon the decision of this Court in the case of Vasudev Daulataram Sadarangani v. Sajni Prem Lalwani, reported in 1984 (1) BCR 211, and the decision of the Madras High Court in the case of S. Krishnaswami, E. Devarajan v. E. Ramiah, reported in AIR 1991 Mad. 214, submits that the right being a continuous right, it does not get barred by the law of limitation.

9. In the case of Vasudev Daulatram (supra), the petitioner had sought Letters of Administration with the Will of his father annexed. The same was objected to by the petitioner's sister and one of the grounds taken up by the sister was that the suit for Letters of Administration was barred by the law of limitation. While rejecting the contention our High Court observed as follows:—

1(2014)6-Mh.L.J.683

21984 (1) BCR 211

3AIR 1991 Mad. 214

“Under the Limitation Act, no period is advisedly prescribed within which a petition for probate or letters of administration or succession certificate must be made after the deceased's death. There is no warrant for the assumption that the right to apply envisaged in Article 137 necessarily accrues on the date of the death of the deceased. Such an application is to seek the Court's imprimatur to perform a duty created by a Will or for recognition as a testamentary trustee. The right to apply is a continuous right which is capable of being exercised as long as the object of the trust exists or any part of the trust, if created, remains to be executed *Gananamuthu Upadesh v. Vana Koilpillai Nadan*, 5, ILR 17 Madras 379, 381. Being a continuous right, it can be exercised at any time after the death of the deceased, as long as the right to do so exists. The right to apply may, therefore, accrue not necessarily within 3 years from the date of the deceased's death but when it becomes necessary to apply, which may be any time after the death of the deceased, be it after several years.”

10. Identical view has been taken by the Madras High Court in *S.Krishnaswami's case* (supra) by holding that Article 137 of the Limitation Act, would not apply to proceedings filed for grant of probate or Letters of Administration with or without Will annexed, as the right to apply is a recurring one. Considering the nature of the proceedings, it further held that, such applications only seek recognition of the Court to perform duties and the proceedings filed for grant of probate or Letters of Administration is not an action in law.

11. I am in respectful agreement with the view expressed in the decisions cited. Though the decisions relate to petitions for probate, letters of administration and succession certificate, the proposition of law expounded therein would be equally, if not more, relevant to an application for heirship certificate. Such an application is also to “seek the Courts imprimatur for recognition as an heir”. Therefore, the right to apply for heirship certificate is also a continuous right which is capable of being exercised as long as object of the right as an heir exists. The right to apply for heirship can, therefore, be exercised at any time after the death of the deceased as long as the right to do so exists. In the circumstances, the trial Court was not correct in its finding that the application filed by the petitioner was barred by limitation.

12. For the above reasons, the petition is allowed in terms of prayer clauses (a) and (b). The matter is remanded to the trial Court for issuance of heirship certificate.”

In view of the aforesaid decision, the delay in the present petition is condoned.

10. In view of the material placed on record, the Petition is accepted and proclamation is dispensed with, and 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 certifying that Shailesh Mahadev Botare (only Son of the Deceased) is the only heir and Legal representative of the Deceased under the provisions of Bombay Regulation Act III of 1827.”

11. Petition is disposed of in terms of the above order, with no order as to costs.

(AARTI SATHE, J.)