



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

WRIT PETITION NO. 6225 OF 2024

SMT. ARCHANA BHIMRAO BAGDE

VERSUS

SMT. SHOBHA Wd/o BHIMRAO BAGDE AND OTHERS

Office Notes, Office Memoranda of Coram,
appearances, Court's Orders or directions and
Registrar's order

Court's or Judge's Order

Mr. Virat Mishra, Advocate for the petitioner
Mr. V. N. Morande, Advocate for respondent no.1
Mr. Bhupesh Patel, Advocate for respondent no.3
Mr. Aniruddha Suneri, Advocate for respondent no.4

CORAM : M. W. CHANDWANI, J.

DATE : FEBRUARY 23, 2026.

1. Heard the learned counsel appearing for the respective parties.

2. This petition challenges the order dated 06.05.2024 passed by the learned Civil Judge, Junior Division, Bramhapuri, Dist. Chandrapur (for short "the Trial Court") in M.J.C. No. 69/2021, whereby the application filed by respondent nos.1 and 2 for grant of legal heirship certificate for availing pensionary benefits of deceased Bhimrao Bagde was allowed; thereby recognizing them along with respondent nos.3 and 4 (objector nos.2 and 3) as the legal heirs of deceased Bhimrao Bagde and the objection raised by the petitioner came to be partly allowed.

3. The petitioner is admittedly the second Wife of deceased Bhimrao Bagde ; respondent no.1 Shobha is the

first Wife of deceased Bhimrao ; respondent no.2 is the Son of Bhimrao begotten from the first wife i.e. respondent no.1, whereas respondent nos.3 and 4 are the Son and Daughter of Bhimrao begotten from the second wife i.e. petitioner.

4. Deceased Bhimrao Bagde was a retired teacher and was getting pension from the Government. He died on 07.09.2021. Respondent no.1/first wife and respondent no.2/son filed an application before the Trial Court for grant of legal heirship certificate for availing pensionary benefits of deceased Bhimrao Bagde wherein the petitioner/second wife along with respondent no.3/Son and respondent no.4/Daughter raised an objection against the grant of heirship certificate claiming to be the only legal heirs of deceased Bhimrao Bagde.

5. The Trial Court partly overruled the objection of the petitioner holding that she being the second wife, is not a legally wedded wife of deceased Bhimrao Bagde and therefore, she is not the heir of deceased Bhimrao Bagde. Whereas, the objection of respondent nos.3 and 4 i.e. the son and the daughter were accepted and they were thereby held to be the legal heirs of deceased Bhimrao Bagde. Accordingly, the Trial Court vide the impugned order partly allowing the objection of the petitioner directed to issue heirship certificate in the names of the respondents including the son and daughter of the

petitioner, which is challenged in this petition.

6. The legal position is not in dispute that the second wife during subsistence of the first marriage is not entitled for getting share of the husband; since her marriage is illegitimate. Learned counsel for the petitioner relied on the decision of the Supreme Court in the case of ***Vidhyadhari and others vs. Sukhrana Bai and others***, reported at ***(2008) 2 SCC 238***.

7. The observations of the Supreme Court in the case of ***Vidhyadhari and others*** (*supra*) relied upon by the petitioner are as under :

“13. Under such circumstances she was always preferable even to the legally wedded wife like Sukhrana Bai who had never stayed with Sheetaldeen as his wife and who had gone to the extent of claiming the succession certificate to the exclusion of legal heirs of Sheetaldeen. In the grant of succession certificate the court has to use its discretion where the rival claims, as in this case, are made for the succession certificate for the properties of the deceased. The High Court should have taken into consideration these crucial circumstances. Merely because Sukhrana Bai was the legally wedded wife that by itself did not entitle her to a succession certificate in comparison to Vidhyadhari who all through had stayed as the wife of Sheetaldeen, had borne his four children and had claimed a succession certificate on behalf of children also. In our opinion, the High

Court was not justified in granting the claim of Sukhrana Bai to the a exclusion not only of the nominee of Sheetaldeen but also to the exclusion of his legitimate legal heirs.

14. Therefore, though we agree with the High Court that Sukhrana Bai was the only legitimate wife yet, we would choose to grant the certificate in favour of Vidhyadhari who was his nominee and the mother of his four children. However, we must balance the equities as Sukhrana Bai is also one of the legal heirs and besides the four children she would have the equal share in Sheetaldeen's estate which would be 1/5th. To balance the equities we would, therefore, choose to grant succession certificate to Vidhyadhari but with a rider that she would protect the 1/5th share of Sukhrana Bai in Sheetaldeen's properties and would hand over the same to her. As the nominee she would hold the 1/5th share of Sukhrana Bai in trust and would be responsible to pay the same to Sukhrana Bai. We direct that for this purpose she would give a security in the trial court to the satisfaction of the trial court."

With the help of these observations, the learned counsel for the petitioner submitted that the petitioner stayed with deceased Bhimrao Bagde till his death and she was also nominated by him in his service record. Therefore, the name of the petitioner should also be included in the legal heirship certificate of deceased Bhimrao Bagde.

8. The learned counsel for the petitioner vehemently submitted that the petitioner resided with deceased

Bhimrao Bagde till his death, whereas the first wife had already left deceased Bhimrao Bagde and was residing separately since the year 1993. Therefore, according to the learned counsel, the equity demands that the petitioner who took care of deceased Bhimrao Bagde should be treated as his legal heir, nevertheless, she is the second wife.

9. Though, the Supreme Court in *Vidhyadhari and others* (supra) has observed that the name of the second wife should also be included as a legal heir and chose to grant succession certificate to the second wife, it was only with a view to protect the interest of her children and ultimately held that with her four children, the first wife will get 1/5th share. Thus, though the heirship certificate was granted in the name of the second wife, she did not get anything. The Supreme Court in its extraordinary jurisdiction under Article 142 of the Constitution of India granted the heirship certificate that too only to protect the interest of her children. Whereas, in the present case the children of the petitioner have already been granted legal heirship certificate vide impugned order. Therefore, this judgment will not help the petitioner.

10. The petition being devoid of merits, deserves to be dismissed. Accordingly, the writ petition is dismissed.

(M.W.Chandwani, J.)