

MHAU080025432022



Civil M.A.207/2022
Shaikh Rukhaya Vs. State

ORDER BELOW IN EXH.1

This is an application under Rule 1 and 2 of Bombay Regulation VIII of 1827 for declaring applicants as recognized heir of the deceased namely Shiakh Kaisar Shaikh Amir (hereinafter referred as “the deceased” for short).

2. It is contended by applicant that the deceased Shaikh Kaisar Shaikh Amir died on 27.01.2022. Applicant nos.1 wife, applicant no.2 and 3 sons and applicant no.4 daughter are the deceased Shiakh Kaisar Shaikh Amir. Applicants are only legal heir of the deceased. Applicants want heir-ship certificate for purpose of official and non-official use. Therefore, the applicants filed present application.

3. Heard Learned Advocate for applicants. Perused the record. I have also gone through the documents placed on the record.

4. In support of the contentions, applicant No.2 Shiakh Naser Shaikh Kaisar filed his examination in chief (**Exh.9**) wherein, he reiterated the contents of application. Applicants also relied upon list of documents i.e. verified copy of death certificate of deceased Shiakh Kaisar Shaikh Amir and his mother deceased Sugrabee Shaikh Amir,

copy of certificate of Municipal Council Sillod, copy of heirship certificate correspondent of Municipal Council Sillod, and verified copy of Aadhar Cards of applicant nos.1 to 4 at (Exh.3), paper publication notice published in “Deshonnati” dtd.04/11/2022 (Exh.8) and closed his evidence vide pursis below Exh.10.

5. Based on the solicitor heir-ship certificate holder cannot be said to have acquired any right, title or interest in the estate of the deceased. In 2006(6) Bom.C.R. 56 *Aloysius Manuel D'souza and ors. vs. Mary Kamala William Manuel D'souza* and 2011 (2) Mh.L.J.424 *Group Grampanchayat, Sasavane Vs. Sunanda Shamrao Bandishti*, it has been held by Hon'ble Bombay High Court that, “the grant of heirship certificate does not establish the right of a party in property of the deceased by itself. The right, if any, of a person claiming ownership in the property of the deceased are not taken away by grant of an heir-ship certificate to heirs. On the other hand, clause 7 makes it clear that heir-ship certificate holder is accountable to all persons having an interest in the property for the acts done by them.”

6. Here it is necessary to re-narrate the ratio laid down by Hon'ble Bombay High Court in case of *Ganpati Vinayak Achwal (Sole Petitioner)* reported it in 2014 (12) Mah. L. J. 683 that “the position of law that emerges from the above provision is that, an heir-ship certificate does not bestow the status of an heir up on a person, grant of such a certificate is only a formal recognition of his existing status as an heir. An heir of executors or legal administrators, by his status, can assume management of the property of the deceased even without a formal recognition by the Court. A person may obtain heir-

ship certificate is any of the tree situation, (I) if he so desires (ii) Where his right as an heir is disputed, and (iii) in order to give confidence to the persons in possession of or indebted to the estate and to deal with them. Thus, grand of heir-ship certificate is solely for the convenience of the heir. Beyond that, it is of no significance. The rules also indicate that, it is mandatory for the Court to issue an heir-ship certificate, if after publication of citation, no objector comes forward within one month from the date of publication. In that case, the Court shall forthwith receive such proof as may be offered of the right of the person making the claim, and if satisfied, shall grant a certificate in the prescribed form declaring him the recognized heir of the deceased. The scope of such inquiry is limited to ascertain the claim of heir-ship of the applicant. The petitioner's claim and the impugned order are required to be appreciated against the above legal position.”

7. In light of ratio laid down in the aforesaid authorities of Hon'ble Bombay High Court, I proceed to appreciate the present application. It is seen from death certificate (**Exh.3**) that deceased **Shaikh Kaisar Shaikh Amir died on 27.01.2022**. Applicants have already complied with Rule 2 of the Bombay Regulation VIII of 1827, by issuing public notice. In support of proof of proclamation, public notice publication of “**Deshonnati**” newspaper dated **04/11/2022** (**Exh.8**) is placed on record. It is prima-facie appeared from the documents i.e. death certificate, verified copies of Aadhar cards (**Exh.3**), applicants are only legal heir of deceased. Even after issuance of proclamation, no objection appeared on record till today. On being satisfied with the documentary proof on record and

considering relation of applicants with deceased, it is necessary to formally recognized them as legal heir of the deceased, hence I proceed to pass following order.

ORDER

1. Issue a certificate in the form of Appendix B of the Bombay Regulation VIII of 1827, formally declaring applicant Nos. **1 to 4** as formally recognized heir of deceased **Shaikh Kaisar Shaikh Amir** on payment of Court fees.
2. This certificate is not useful to transfer the any other movable & immovable property of the deceased.
3. It is needless to mention that this certificate does not establish the right of applicants in properties of the deceased by itself.

Sillod

Date :09/12/2022

(A. B. Biradar)
2nd C.J.J.D & J.M.F.C.
(Court No. 3) Sillod

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are the same, word to word, as per the original Order.

Name of the Stenographer	: - Y. S. Mali
Court	: 2 nd C.J.J.D & J.M.F.C. Court No.3 Sillod
Date	: - 09.12.2022
Order signed by the	
Presiding Officer on	: - 09.12.2022
Order uploaded on	: - 12.12.2022