

MHKO020020872022



ORDER BELOW EXH. NO.1 Civil M.A. No. 270/2022
Vicky Sutar Vs. Mahadev Sutar and others

1. By filing this application applicant No.1 and 2 have prayed for issuance of succession certificate under section 372 of Indian Succession Act for declaring them L.R's of deceased Shantabai Baburao Sutar in order to get Rs.4,26,613/- which have been deposited in the name of deceased Shantabai Baburao Sutar as per order in Motor Accident Claims Tribunal, Kolhapur in MACP No. 350/2016.

2. According to applicant No.1 and 2, they are son and wife respectively of deceased Sanjay Baburao Sutar who had died on 14/4/2016 in a road accident at Surur, Tal. Vai, Dist. Satara. These applicants along with mother of deceased Sanjay i.e. deceased Shantabai Baburao Sutar had filed Motor Accident Claim Petition bearing No.350/2016 in the Motor Accident Claims Tribunal at Kolhapur. The said petition was allowed and compensation of Rs.7,20,000/- was allowed to the applicant No.1, 2 and deceased Shantabai Baburao Sutar. According to these applicants excluding Rs.4,26,613/-, they have received remaining amount as per the order of the tribunal. The amount of Rs.4,26,613/- was payable to the deceased Shantabai Baburao Sutar. That amount is deposited in the tribunal vide 'C' Register Sr.No.67 dated 2/8/2021. However Shantabai Baburao Sutar died on 16/09/2019. The amount of Rs.4,26,613/- which has been deposited in

the Tribunal, was the share of deceased Shantabai Baburao Sutar in the compensation awarded in MACP No. 350/2016.

3. According to these applicants, only applicant No.1 and 2 are entitled to receive the amount of Rs.4,26,613/- being legal heirs of deceased Shantabai Baburao Sutar and on the ground that amount was awarded as a compensation due to death of Sanjay Baburao Sutar who was their father and husband respectively. By relying on all these contentions applicants have prayed for issuing succession certificate entitling them to receive Rs.4,26,613/- after the death of Shantabai Baburao Sutar.

4. Respondent No.1 and 2 i.e. the sons of Shantabai Baburao Sutar objected this application by filing say at Exh.10. They claimed that they have 1/3rd share each in the Rs.4,26,613/- as they are also sons of deceased Shantabai Baburao Sutar. Accordingly they prayed for granting succession certificate entitling applicants 1/3rd share jointly, and these respondents with 1/3rd share each in the amount of Rs.4,26,613/- deposited in the name of deceased Shantabai Baburao Sutar in MACP No.350/2016.

5. I heard learned advocates for applicants and respondents. My learned predecessor has framed issues at Exh.16/B. I have recorded my finding on those issues for the reasons stated hereinafter.

Sr.No.	Issues	Findings
1)	Whether applicants are only legal heirs of deceased Shantabai Baburao Sutar	Applicant applicant No.1 Vicky, respondent No.1 Mahadev and respondent No.2 Bajarang are legal heirs of deceased Shantabai Baburao Sutar

2)	Whether applicants are entitled to the relief as prayed?	Applicant No.1 Vicky, respondent No.1 Mahadev and respondent No.2 Bajarang being legal heirs of deceased Shantabai Baburao Sutar, they are entitled to 1/3rd share each in the amount deposited in the name of and for deceased Shantabai Baburao Sutar in MACP No. 350/2016
3)	What order ?	As per final order.

REASONS

As to issue No.1 and 2 :-

6. It is undisputed fact that deceased Shantabai Baburao Sutar had 3 sons viz. Mahadev i.e. respondent No.1, Bajarang i.e. respondent No.2 and deceased Sanjay. It is also undisputed fact that Sanjay died in a road accident on 14/4/2016 at Surur, Tal. Vai, Dist. Satara. It is also undisputed fact that applicant No.1 and 2 are son and wife of deceased Sanjay. It is also undisputed fact that in MACP No. 350/2016 compensation of Rs.7,20,000/- granted by the Motor Accident Claims Tribunal, Kolhapur and out of which Rs.4,26,613/- was given for mother Shantabai Baburao Sutar. It is also undisputed fact that deceased Shantabai Baburao Sutar died on 16/09/2019.

7. Death extract of deceased Sanjay is filed at Exh.3/1 showing his death on 14/4/2016 at Surur, Tal. Vai. Death extract of deceased Shantabai

Baburao Sutar at Exh.3/2 shows her death on 16/9/2019. The order of Motor Accident Claims Tribunal, Kolhapur in MACP No.350/2016 at Exh.3/4 shows that in toto compensation of Rs.7,20,000/- was granted from respondent No.1 to 3 jointly and severally of that proceeding to present applicants and deceased Shantabai Baburao Sutar. This order further shows that sum of Rs.7,20,000/- was to be paid equally to applicant No.1 therein and applicant No.3 therein. The applicant No.1 in MACP No. 350/2016 was Sangita Sutar who is present applicant No.2 and applicant No.3 in MACP No. 350/2016 was deceased Shantabai Baburao Sutar.

8. It is not disputed by non-applicants that Rs.4,26,613/- have been deposited in the Tribunal as a share of deceased Shantabai Baburao Sutar pursuant to the order in MACP No. 350/2016.

9. In this proceeding applicants have claimed that they are the only legal-heirs who are entitled to receive that amount. It is undisputed fact that deceased Shantabai Baburao Sutar was alive till 16/10/2019. The share of Rs.4,26,613/- in the compensation granted in MACP No.350/2016 was belonging to her. After her death, as per section 15 of Hindu Succession Act, 1956 her property devolved firstly upon her sons and daughter and the husband. It is not contention of either of the parties that the husband of Shantabai i.e. Baburao Sutar is alive. Vide section 16 Rule 2 of Hindu Succession Act, 1956, if any son or daughter of the concerned female had predeceased leaving behind his or her own children at the time of female's death, then children of such son or daughter shall take between them the share which such predeceased son or daughter would have taken had he or she been living.

10. As per section 16 Rule 1, Rule 2 of Hindu Succession Act, 1956 r/w section 15 of the said Act clearly shows that after the death of

Shantabai Baburao Sutar, her three sons became her legal-heirs to succeed her property. However as her one son i.e. Sanjay had predeceased her hence his son i.e. applicant No.1 Vicky becomes her legal-heir through deceased Sanjay. Therefore after the death of deceased Shantabai Baburao Sutar, her property would devolve equally on applicant No.1 Vicky, respondent No.1 Mahadev and respondent No.2 Bajarang. Therefore as far as amount of Rs.4,26,613/- deposited for deceased Shantabai Baburao Sutar in MACP No.350/2016 is concerned, applicant No.1 Vicky, respondent No.1 Mahadev and respondent No.2 Bajarang are her legal heirs who shall get that amount in equal proportion.

11. This proceeding is not objected by any other third party in spite of issuance of public notice vide exh.13/2 and vide issuance of Jahirnama vide Exh.6.

12. In the light of all aforesaid discussion, I hold that applicant No.1 Vicky, respondent No.1 Mahadev and respondent No.2 Bajarang are legal heirs of deceased Shantabai Baburao Sutar and answer issue No.1 to that effect.

13. As far as issue No.2 is concerned, I hold that applicant No.1 Vicky, respondent No.1 Mahadev and respondent No.2 Bajarang being legal heirs of deceased Shantabai Baburao Sutar, they are entitled to 1/3rd share each in the amount deposited in the name of and for deceased Shantabai Baburao Sutar in MACP No. 350/2016. Accordingly I answer issue No.2 to that effect.

14. In view of all aforesaid discussion and findings on issue No.1 and 2, I pass following order -

ORDER

- 1] Application is partly allowed.
- 2] Succession certificate be issued in the name of applicant No.1 Vicky Sanjay Sutar entitling him to receive 1/3rd share in the amount of Rs.4,26,613/- deposited in the name of deceased Shantabai Baburao Sutar in MACP No.350/2016 filed in Motor Accident Claims Tribunal, Kolhapur.
- 3] Succession certificate shall only be issued after payment of requisite Court fee by the applicant No1 Vicky Sanjay Sutar.
- 4] As far as respondent No.1 and 2 are concerned, if they are desirous of having succession certificate in respect of their 1/3rd share each in the in the amount of Rs.4,26,613/- deposited in the name of deceased Shantabai Baburao Sutar in M.A.C.P., No. 350/2016 filed in Motor Accident Claims Tribunal, Kolhapur then such succession certificate shall also be issued after payment of requisite Court fee.
- 5] As the amount of Rs.4,26,613/- is stated to have been deposited on 02/08/2021 in the Motor Accident Claims Tribunal, Kolhapur hence it could have accrued the interest thereon. Therefore succession certificate to be issued as per this order to either applicant No.1,

respondent No.1 or respondent No.2 then it shall deemed to have entitled them to receive the proportionate interest accrued on Rs.4,26,613/-.

Date:- 10/10/2024

(P. N. Deshpande)
7th Jt. Civil Judge Sr. Dn.
Kolhapur.