

**(2014) 08 BOM CK 0162**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 2177 of 2014**  
**In Re: Ganpati Vinayak Achwal**

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**Date of Decision :** 21-08-2014

**Acts Referred:**

Constitution of India, 1950 — Article 227

**Citation :** (2015) 2 ALLMR 285 : (2014) 5 BomCR 743 : (2014) 6 MhLj 683

**Hon'ble Judges :** R.P. Sondurbaldota, J

**Bench :** Single Bench

**Advocate :** Manoj Badgujar, Advocate for the Appellant

**Final Decision :** Allowed

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## Judgement

R.P. Sondurbaldota, J.—The petitioner had applied for heirship certificate under Rule-2 of the Bombay Regulation Act in respect of his father and his two uncles who had died Bachelors. All the three brothers have left immovable properties at Ambernath, Thane. The death of the father had taken place on 25th September, 1968 and the death of the uncles had taken place on 20th November, 1985 and 13th July, 1990.

2. The application had been filed by the petitioner through his son and Constituted Attorney. As per the prescribed procedure, citation and public notices were issued for calling objections from the public at large. No objection was received from anybody to resist the application. Despite the fact, the trial Court i.e. the Court of Civil Judge Senior Division, Kalyan rejected the application on two grounds. The first ground was bar of limitation under Article 137 of the Limitation Act and the second ground was physical incapacity of the petitioner to manage the properties. Being aggrieved by the decision of the trial Court, the petitioner has invoked extra-ordinary jurisdiction of this Court under Article 227 of the Constitution of India.

3. Mr. Badgujar, the learned Advocate for the petitioner, submits that the learned Trial Court Judge had completely misdirected himself as regards the purpose of heirship certificate. He further submits that considering the nature of the

certificate and its purpose, neither the bar under Article 137 of the Limitation Act is attracted to it, nor the health of the petitioner can be considered for grant of the certificate. Mr. Badgujar, refers to the provisions of the Bombay Regulation Act, 1827 ("the Regulation" for short) to point out that, the purpose of issuance of heirship certificate thereunder is only to provide formal recognition to the heirs and as such the right to apply for heirship certificate would be a continuous right, which is capable of being exercised as long as the object of the application exists.

4. The object of the Regulation, it's first recital and Rules 1 to 3 of it's Chapter-I, which are relevant for the present purposes, read as follows :-

"A Regulation to provide for the formal recognition of heirs, executors and administrators and for the appointment of administrators and managers of property by the Courts.

WHEREAS, at the same time that it is in general desirable that the heirs, executors or legal administrators of persons deceased should, unless their right is disputed, be allowed to assume the management or sue for the recovery for property belonging to the estate, without the interference of Courts of justice, it is yet in some cases necessary or convenient that such heirs, executors or administrators, in order to give confidence to persons in possession of, or indebted to, the estate to acknowledge and deal with them, should obtain a certificate of heirship, executorship, or administratorship, from the Zila Court."

## CHAPTER I

"Rules for the Recognition of Heirs, Executors and Administrators when there is a Competent Claimant

1. Legal heir, etc., of person deceased competent to represent him without recognition from court : Whenever a person dies leaving property, whether movable or immovable, the heir or executor, or legal administrator may assume the management, or sue for the recovery, of the property, in conformity with the law or usage applicable to the disposal of the said property, without making any previous application to the Court to be formally recognised.

2. First. But if such recognition requested, proclamation will be issued : But if an heir, executor or administrator is desirous of having his right formally recognized by the Court, for the purpose of rendering it more safe for persons in possession of, or indebted to, the estate to acknowledge and deal with him, the Judge, on application, shall issue a proclamation, in the form contained in Appendix A, inviting all persons who dispute the right of the applicant to appear in the Court within one month from the date of the proclamation and enter their objections, and declaring that, if no sufficient objection is offered, the Judge will proceed to receive proof of the right of the applicant, and if satisfied, grant him a certificate of heirship, executorship or administratorship.

Second. Publication of proclamation :

3. If no objection appears, recognition to be granted :

If, at the expiration of the time mentioned in the proclamation, no sufficient objection has been made, 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 form contained in Appendix B, declaring him the recognized heir, executor or administrator of the deceased."

5. The position of law that emerges from the above provisions is that, an heirship certificate does not bestow the status of an heir upon a person. Grant of such a certificate is only a formal recognition of his existing status as an heir. An heir or executor or legal administrator, by his such status, can assume management of the property of the deceased even without a formal recognition by the Court. A person may obtain heirship certificate in any of the three situations i.e. (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 grant of heirship 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 heirship 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 enquiry is limited to ascertain the claim of heirship of the applicant. The petitioner's claim and the impugned order are required to be appreciated against the above legal position.

6. In view of the above legal position, I find that Mr. Badgujar is right in his submission that, the trial Court lost sight of the fact of the purpose of obtaining heirship certificate. It is not for management of the property as already noted above. It is essentially a formal recognition of status of a person. Therefore, physical health or strength of the petitioner was not a factor relevant to be taken into consideration for grant or refusal of the heirship certificate. The only relevant consideration was, whether the applicant establishes that he is the heir of a person in respect of whom, he seeks heirship certificate. If no objector comes forward as provided by Rule-3 of Chapter-I of the Regulation, the Court must grant certificate to the applicant. This view is fortified by the decision of Single Judge of this Court, relied upon by Mr. Badgujar. By the judgment and order dated 16th March, 2011 passed in Writ Petition No. 302 of 2011 by Nagpur Bench of our High Court in the case of Vilas Sadanand Sapre (Mentally Challenged) through Guardian Sister Sau. Anuradha Dhananjay Bhate and anr. Versus. The Civil Judge, Senior Division, Amravati. The petitioner in that case was denied heirship certificate on the ground that, he was mentally challenged. The trial Court had held that, unless the next friend and guardian, who had filed the application was appointed as an "Guardian" through the court of competent

jurisdiction under the provisions of the Mental Health Act, she could not act on behalf of the petitioner and file application. This Court, looking into the purpose of issuance of heirship certificate under the Regulations held that, for considering such an application, the Court is not required to determine the title of the deceased or the persons claiming heirship certificate to any property. The Court is only required to consider whether the persons claiming heirship certificate is the heir of the deceased.

7. In the case on hand, nobody had come forward to object to the grant of heirship certificate. Thus, there was no challenge to the claim of heirship. Further, there is nothing on record, as also, in the impugned order to suggest that there is no proof of the right claimed by the petitioner. In the circumstances, it was incumbent upon the trial Court to issue the heirship certificate.

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 Vs. Sajni Prem Lalwani reported in 1984 (1) BCR page 211, and the decision of the Madras High Court in the case of In the matter of S. Krishnaswami and etc. etc., 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 :-

" 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.