

Civil M.A. No. 01/2018.**ORDER BELOW EX. 1****Reasons**

This is application filed by applicants namely, Ramesh Khandu Mahajan and Shantabai Khandu Mahajan to issue succession certificate in their names as well as in the name of Nirmalabai Bhaulal Mahajan and Latabai Gulab Mahajan vide provisions under part X of the Indian Succession Act, 1925.

2. It is the contention of the applicants that applicant no.1 is son and applicant no.2 is widow of deceased Khandu Madku Mahajan who died on 27/10/2017 at Dondaicha, Tq.Shindkheda, Dist.Dhule. Beside them, the deceased has two daughters namely, Nirmalabai Bhaulal Mahajan and Latabai Gulab Mahajan. The deceased was doing service as well as business during his lifetime. He had opened saving account in the State Bank of India at Dondaicha and he was maintaining said account. His saving account number is 30983696436. At the time of his death, the amount to the tune of Rs.2,69,098/- was outstanding/balance in said account. Hence, after his demise, they approached to State Bank of India to pay said balance amount to them as successors. However, the bank officers asked them to succession certificate issued by competent court of law. Hence, they filed present petition.

3. On presentation of this application, the public notice (Ex.13) by way of proclamation was issued in daily newspaper 'Aapla Maharashtra' on 11/01/2018 and objections from interesting persons were invited but till today none has objected the application.

4. Thereafter, the matter was listed for evidence. During the course of evidence, the applicants have filed the claim affidavit of applicant no.1 at Ex.10 in support of their claim and closed their oral evidence pursis at Ex.14. Apart from oral evidence, they produced the death certificate of Khandu Madku Mahajan at Ex.11. They have also produced the original passbook of deceased

Khandu Madku Mahajan in respect of his saving bank account no.30983696436 maintained in State Bank of India, Branch at Dondaicha.

5. Heard learned Advocate Shri.N.P.Ayachit for the applicants.

6. On perusal of death certificate of deceased Khandu Madku Mahajan, it reveals that he died on 27/10/2017. On perusal of passbook of deceased Khandu Madku Mahajan in respect of his saving bank account no.30983696436 maintained in State Bank of India, Branch at Dondaicha, it reveals that the amount to the tune of Rs.2,69,098/- is due in said account. Therefore, said amount appears to be payable to the deceased Khandu Madku Mahajan from State Bank of India, Branch at Dondaicha. On perusal of claim affidavit of applicant no.1, it reveals that he has stated on oath that he is son of deceased Khandu Madku Mahajan. Beside him, there are other heirs to him who are his mother namely, Shantabai Khandu Mahajan (applicant no.2) and his sisters namely, Nirmalabai Bhaulal Mahajan and Latabai Gulab Mahajan. Nobody has come forward to dispute their relation with deceased Khandu Madku Mahajan as well as their claims in response to public notice issued by this court. Therefore, in such circumstances, there is no reason to disbelieve the applicants. Hence, it is established on record that the applicants namely, Ramesh Khandu Mahajan and Shantabai Khandu Mahajan as well as Nirmalabai Bhaulal Mahajan and Latabai Gulab Mahajan are successors and heirs of deceased Khandu Madku Mahajan. Being heirs and successors of deceased Khandu Madku Mahajan, they are entitled to receive the amount due or payable to deceased Khandu Madku Mahajan from State Bank of India Branch Dondaicha in his saving bank account. Therefore, the application deserves to be allowed.

7. The applicants have claimed to issue succession certificate in their names as well as in the name of Nirmalabai Bhaulal Mahajan and Latabai Gulab Mahajan. Hence, they have claimed issuance of succession certificate more than one person jointly. The amount claimed by them or the amount payable to them

is not different. It is one and the same.

8. Therefore, the question which arises for consideration is whether a succession certificate can be given in favour of more than one person jointly or whether certificates can be issued in favour of different claimants. Though, there is no direct provision under the Indian Succession Act, 1925 dealing with this question, some help is available from the provision of sub section (4) of section 373 which reads as under ;

373(4) When there are more applicants than one for a certificate and it appears to the judge that more than one of such applicants are interested in the estate of deceased, the judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.

9. In this reference the Hon'ble Rangoon High Court observed in the case **Daw Ohn Bwint V/s Daw Saw May, AIR 1937, Rangoon 336** that unfortunately the case law available in this respect is very scanty. It would not seen that the Act contemplated the issue of joint certificates but I do not think that it can be said that if such certificate were issued their issue would be illegal under the wording of this section. In the case **Sukumar Deb Roy V/s Parbati Uala, AIR 1941 Cal.663**, the Hon'ble Division Bench observed that the practice of granting certificate had been condemned and was fraught with obvious inconvenience. There may, however, be cases when several applicants have same degree of interest in the estate of the deceased and there are no circumstances present which would enable the judge to say that one is better qualified than other. Therefore, it was held that under such circumstances, the granting of joint certificate is not illegal, particularly, if the persons to whom the certificate is granted agree to take it in that form. Hence, in this case also, there are no circumstances present which would enable me to say that one is better qualified

than other. Hence, the succession certificate is to be granted jointly as per their proportionate share. Applicant no.1 is son, applicant no.2 is widow, Nirmalabai Bhaulal Mahajan and Latabai Gulab Mahajan are married daughters of deceased Khandu Madku Mahajan. They all came under the category of class-I heirs as per the schedule given under Hindu Succession Act, 1956. As per the amendment effected in the year 2005 under Hindu Succession Act 1956, the daughter has been given the status of coparceners as son in the coparcenary property. The amount payable to the deceased is one kind of coparcenary property. As like daughters, the widow of deceased male Hindu is also entitled to have equal share as that of son and daughter in the coparcenary property. Therefore, all of them are having equal share in the amount payable to deceased Khandu Madku Mahajan. Therefore, they all are entitled to have share in the amount payable to the deceased Khandu Madku Mahajan equally. Hence, they all are entitled to get succession certificate jointly in equal proportion.

10. Considering the legal position that succession certificate is time being arrangement and not confirm any absolute right to holder of the certificate, the possibility cannot be ruled out that in future any other person may claim and establish his right, independently or along with the applicant and respondent no.2 to the above said amount. Therefore, to cope up that situation, it would be proper to ask the applicants and Nirmalabai Bhaulal Mahajan and Latabai Gulab Mahajan to file an undertaking that if required they will return all the benefits obtained by them with the help of this succession certificate. Hence, the order.

:ORDER:

1. The application is allowed.
2. Issue succession certificate jointly in favour of the applicants Ramesh Khandu Mahajan and Shantabai Khandu Mahajan as well as Nirmalabai Bhaulal Mahajan and Latabai Gulab Mahajan. The amount payable to deceased Khandu Madku Mahajan by State Bank of India Branch Dondaicha from his saving account

no.30983696436 maintained by deceased in that bank be given to them in equal proportion.

3. The applicants Ramesh Khandu Mahajan and Shantabai Khandu Mahajan as well as Nirmalabai Bhaulal Mahajan and Latabai Gulab Mahajan shall give the undertaking as observed by this court under the body of the order at clause no.10.
4. As the applicant no.2 and Nirmalabai Bhaulal Mahajan and Latabai Gulab Mahajan being women are exempted from payment of court fee stamp on succession certificate. Applicant no.1 to pay necessary court fees stamp on the amount payable to the deceased Khandu Madku Mahajan to the extent of his share.
5. After compliance of above, succession certificate be issued on stamp paper in the name of the applicants Ramesh Khandu Mahajan and Shantabai Khandu Mahajan as well as Nirmalabai Bhaulal Mahajan and Latabai Gulab Mahajan **jointly**.

Sd/-

Dated :- 19.04.2018.

(Santosh H. Garad),
Civil Judge J.D., Dondaicha.

Certificate

I certify that the contents of this PDF File are word to word as per Original Judgment/Order.

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Name of the Court: Civil Court, J. D. & J.M.F.C. Court,
Dondaicha.

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