

Received on : 14/06/2016.
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Decided on : 25/07/2019.
Duration : 03-Y.01-M.11-D.

**In the Court of 4th Jt. Civil Judge Senior Division, Satara,
At : Satara.
(Presided over by Smt.S.V.Nikam)**

**Civil Misc. Appln. No.1 of 2018
(CNR : MHST02-000048-2018)
Exh. No.17.**

Smt. Shaila Baburao Kamble,
Age : 50 years, Occ.: Service,
R/o. Sangavi, Tal.Phaltan, Dist.Satara. **Applicant.**

Versus

1. **Mangal Baburao Kamble,**
Age : 38 years, Occ.: Household,
R/o. Talegaon Dabhjade, Tal.Mawal,
Dist.Pune,
2. **Shri.Manoj Baburao Kamble,**
Age : 27 years, Occ.: Labour, **Opponents**
3. **Shri.Mahesh Baburao Kamble,**
Age : 27 years, Occ.: Labour,
4. **Shri. Mahendra Baburao Kamble,**
Age : 25 years, Occ.: Labour,
No.2 to 4 R/o.Sangavi, Tal.Phaltan,
Dist.Satara.

Application under section 372 of Indian Succession Act.

Appearance :-

Learned Counsel Shri. N. M. Yadav for the applicant.
Learned Counsel Shri. J. M. Metkari for the opponents.

J U D G M E N T

(Delivered on 25/07/2019)

This is an application for issuance of legal heirship certificate.

Brief facts of the case are as under:-

2. The applicant has filed this application to recognize her and opponent no. 2 to 4 as legal heirs of Late Baburao Bhimrao Kambale who died on 14/08/2014 at Tukaram Nagar, Talegaon Dabhade, Tal. Maval, Dist. Pune. Applicant was legally wedded wife of Late Baburao and opponent no. 2 to 4 are sons of the applicant and Late Baburao. While opponent no. 1 was a mistress of Late Baburao. However, Baburao never treated the applicant well. He expelled her out of the house along with opponent no.4. Therefore, she started residing at her parent's house.

3. It is further contended by the applicant that, she had filed M. A. No. 45/1998 against Late Baburao for maintenance in the Court of Judicial Magistrate, First Class at Phaltan. Said application decided on 08/02/2000 and Late Baburao ordered to pay monthly maintenance of Rs.500/- each to the applicant and opponent no.4. Baburao was in service in Railway Department. After his demise, when the applicant claimed family pension, concerned office told her to submit heirship certificate. Hence, this application.

4. Applicant no.1 has strongly objected the application averring that she is legally wedded wife of Late Baburao. She has three

daughters and one son born out of the wed-lock. She had resided with Late Baburao. After demise of Baburao, they are stayed in worst economical condition. Therefore, she need benefit of family pension. On these grounds, she has prayed for rejection of the application.

5. Perused application and say. On the basis of these material, I have framed issues at Exh. 14, I have reproduced them along with my finding as under :

Sr. No.	ISSUES	ANSWERS
1]	Does the applicant prove that she is legal heir of Late Baburao Bhimrao Kambale ?	Yes.
2]	Whether the applicant is entitle for the relief claimed ?	Yes.
3]	What order ?	Application allowed.

REASONS

As To Issue No. 1 to 3 :-

6. The applicant has claimed herself and opponent no. 2 to 4 legal heirs of deceased Baburao Bhimrao Kambale being his legally wedded wife. But opponent No.1 has denied her relationship with Late Baburao. Therefore, the burden is casted on the applicant to prove firstly that, she was legally wedded wife of Late Baburao. To discharge the burden, the applicant examined herself on oath. She has reiterated contents of the application in her evidence (Exh.15). She has stated that, opponent no. 2 to 4 are her sons born out of her wed-lock with Late Baburao. Opponent no. 1 was a mistress of Late Baburao. Baburao never treated her well. He expel her out of the house along with opponent no.4. Therefore, she started residing at her parent's house.

She has further deposed that, she had filed M. A. No. 45/1998 against Late Baburao for maintenance in the Court of Judicial Magistrate, First Class at Phaltan. Said application decided on 08/02/2000 and Late Baburao ordered to pay monthly maintenance of Rs.500/- each to the applicant and opponent no.4.

7. In support of oral evidence, the applicant has filed documentary evidence on record. She has produced death certificate of Late Baburao (Exh.17), photo copy of judgment in M.A.No. 45/1998 (Exh.4/3) and letter sent by Central Railway, Pune bearing No. PA/P/Settl/ONR/BBK (Exh.4/2).

8. On the other hand, opponent No.1 has neither cross-examined the applicant nor adduced any independent evidence to substantiate her defence. She has not produced a single document to establish her relationship with Late Baburao as his legally wedded wife.

9. Now, the question is whether the applicant is legally wedded wife of Baburao Bhimrao Kambale and can claim herself and opponent no. 2 to 4 as legal heirs of deceased Baburao Bhimrao Kambale.

10. Reverting back to the averments in the say filed by opponent no.1. She has not denied status of the applicant being first wife or legally wedded wife of Late Baburao. Moreover, the judgment in M.A. 45/1998 demonstrate that the applicant being legally wedded wife of Late Baburao got maintenance from the Court.

11. In background of above mentioned facts, reference can be made of reported case of **Nandan Shirke V/s. Jayashree Shirke decided on 15/02/2011** by the Hon'ble Bombay High Court wherein it was held that, *“second wife is not entitled to get heirship certificate.”* In another case of ***Draupadabai @ Draupadi Jaydeo Pawar Vs. Indubai d/o Kashinath Shivram Chavan in Civil application No. 1770/2015***, wherein the Hon'ble Bombay High Court decided on 10.02.2016 that, *“marriage contracted with second lady in subsistence of first marriage or spouse is living, then second lady from the Hindu cannot claim as a widow entitled to pension subject to personal law as stated in Rule 26 of the Maharashtra Civil Services (Conduct) Rules”*. Same analogy has to be applied in present matter since applicant is first and legally wedded wife of Late Baburao Kambale is entitle to claim pensionary benefit. It at all it is presumed that, Baburao had solemnized marriage with opponent no.1, said marriage was in contravention of Section 5 (1) of the Hindu Marriage Act and hence was a void marriage. Therefore, first wife i.e. the applicant and her sons i.e. opponent no. 2 to 4 born out of her wedlock with Late Baburao are legal heirs of deceased Baburao Bhimrao Kambale. In view of above mentioned judgment and legal provision Heirship Certificate can be granted in the name of the applicant and opponent no. 2 to 4. Hence, I answer point No.1 and 2 in the affirmative and in answer to point No.3, I pass the following order.

ORDER

- 1] Application is allowed.
- 2] Applicant and opponent no. 2 to 4 are legal heirs of Late Baburao Bhimrao Kambale.

3] The legal heir recognition be issued in the name of applicant and opponent no. 2 to 4 being legal heirs of Late Late Baburao Bhimrao Kambale on furnishing requisite stamp under Article 12, Schedule-I of the Bombay Court Fees Act and as per Appendix-B.

Satara
Date : 25/07/2019

Sd/-
(S. V. Nikam)
4th Jt. Civil Judge Senior Division,
Satara.