

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA**

ON THE 22nd OF AUGUST, 2023

MISC. PETITION No. 2933 of 2023

BETWEEN:-

**NAYAN RAICHANDANI S/O SHRI RAKESH RAICHANDANI, AGED
1. ABOUT 21 YEARS, OCCUPATION: STUDY HOUSE NO. 80 FREEGANJ
DISTRICT RATLAM (MADHYA PRADESH)**

**DEV RAICHANDANI S/O SHRI RAKESH RAICHANDANI, AGED ABOUT
2. 19 YEARS, OCCUPATION: STUDENT HOUSE NO. 80 FREEGANJ
RATLAM (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI PRAKASH CHANDRA SHRIVAS, ADVOCATE)

AND

**SHRIMAN PRABANDHAK MAHODAY BHARTIYA STATE BANK OF
1. INDIA SHAKHA MITRA NIWAS ROAD, MAIN BRANCH DISTRICT
RATLAM (MADHYA PRADESH)**

**SHRIMAN PRABANDHAK MAHODAY BHARTIYA STATE BANK OF
2. INDIA SHAKHA COLLECTORATE AREA BRANCH RATLAM AJANTA
TALKIES ROAD, RATLAM (MADHYA PRADESH)**

**SHRIMAN PRABANDHAK MAHODAY BHARTIYA STATE BANK OF
3. INDIA SHAKHA S.M.E BRANCH MITRA ROAD NIWAS ROAD RATLAM
(MADHYA PRADESH)**

**SHRIMAN PRABANDHAK MAHODAY BANK OF BARODA SHAKHA
4. STATION ROAD RATLAM (MADHYA PRADESH)**

5. SARVA SADHARAN (MADHYA PRADESH)

**GIRDHARI LAL S/O SHRI GUNNUMAL JI RAICHANDANI, AGED
6. ABOUT 65 YEARS, OCCUPATION: RETIRED RAILWAY KARMACHARI
12 MITRA NIWAS COLONY CONVENT SCHOOL KE PEECHE, RATLAM**

(MADHYA PRADESH)

**SHRIMATI JASHODA W/O LATE SHRI ROCHOMAL JI MOTIYANI,
7. AGED ABOUT 70 YEARS, OCCUPATION: HOUSEWORK 2082 PRATAP
WARD GANDHI NAGAR HAJUR BHOPAL (MADHYA PRADESH)**

**SMT. NIRMALA W/O LATE SHRI TIKAMDAS JI, AGED ABOUT 60
8. YEARS, OCCUPATION: HOUSEWORK 14/1066 CHOPASANI HOUSING
BOARD JODHPUR (RAJASTHAN)**

.....RESPONDENTS

(NONE FOR THE RESPONDENTS)

*This petition coming on for admission this day, the court passed
the following:*

O R D E R

The petitioners have filed the present petition under Article 227 of the Constitution of India being aggrieved by the order dated 06.05.2023 passed by the Civil Judge, Class – I, Senior Division, Ratlam, whereby the prayer of the petitioners for rejection of WS as well as counter claim filed under Order VI Rule 8 of the Code of Civil Procedure, 1908 has been rejected.

02. The facts of the case reveal that petitioners have filed a succession case under Section 372 of the Indian Succession Act claiming succession of the amount lying in the State Bank of India, Bank of India and Bank of Baroda. The description of the accounts are given in paragraphs – 5, 6, 7 & 8 of the application. The petitioners are seeking succession on the basis of a will dated 05.02.2022. According to them, there are other legal heirs / representatives.

03. In the said application, Girdharilal, Smt. Jashoda and Smt. Nirmala filed an application under Order I Rule 10 of the CPC for

impleadment, which came to be allowed and they have been impleaded as defendants. After their impleadment, they filed reply as well counter claim claiming succession certificate. They are also challenging that will in favour of the petitioners is forged. The petitioners / plaintiffs filed an application under Order VII Rule 11(d) of the CPC stating that succession proceedings are not like a regular civil suit, therefore, their counter claim is not liable to be entertained and the same be rejected. Defendants No.6 to 8 filed a reply and vide order dated 06.05.2023, the Court below has rejected the prayer made by the plaintiff. Hence, the present petition is before this Court.

04. Learned counsel for the petitioners submits that counter claim can be filed under VIII Rule 6 of the CPC only in a suit and not in a succession proceedings, therefore, the Court below has committed illegality by entertaining the counter claim submitted by the respondents under Section 372 of the Indian Succession Act.

05. Section 372 of the Indian Succession Act is reproduced below:-

“372. Application for certificate — (1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:—

- (a) the time of the death of the deceased;
- (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;
- (c) the family or other near relatives of the deceased

and their respective residences;

(d) the right in which the petitioner claims;

(e) the absence of any impediment under [section 370](#) or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and

(f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code, 1860 (45 of 1860).

(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.”

[Emphasis Supplied]

06. The aforesaid provision of law makes it clear that an application for issuance of succession certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 for signing and verification of a plaint by or on behalf of plaintiff.

07. The respondents / defendants, who are also claiming succession on account of death of Laxmi Raichandani are also entitled to file separate application under Section 372 of the Indian Succession Act. In order to avoid the multiplicity of the proceedings, the learned Court below has not committed any error by entertaining the counter claim in the pending succession proceedings. The issue of succession is liable to be decided under Section 372 of the Indian Succession Act as the respondents have been impleaded as defendants under Order I Rule 10 of the CPC and the said order has

not been challenged by the petitioners. Section 373(4) provides that 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 the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and fitness in other respects of the applicants. Therefore, in one proceeding, there may be number of applicants and the judgment is liable to be passed on their respective claim on merit. No case for interference is made out in the matter.

The present Miscellaneous Petition is misconceived and is hereby dismissed.

(VIVEK RUSIA)
J U D G E

Ravi