

ORDER BELOW EXH.1 IN CIVIL M.A. NO.37/2023

(CNR NO. MHSO130002612023)

1. This order shall dispose of an application filed for grant of heirship certificate under the Bombay Regulation Act, VIII of 1827.

Brief facts of the application are as under:

2. The applicants contend that, Sushilaben Chapsi Dharmasi died on 05/12/2020 at Mumbai. The husband of Sushilaben namely Chapsi Damji Dharmasi died on 20/02/2000 at Barshi. Applicants are in need of the heirship certificate for mutating their names as heirs of deceased Sushilaben Chapsi Dharmasi at T.I.L.R. Office Barshi on Barshi City Survey No.4076 total area 142.2 sq.mtrs. There are no other legal heirs to the deceased Sushilaben Chapsi Dharmasi except the applicants. Hence, applicants have filed an instant application for grant of heirship certificate under Bombay Regulation Act, VIII of 1827. The instant application is also supported by an affidavit.

3. In the present application, citation was issued which is at Exhibit 6 and paper publication was issued which is at Exh.5. The paper notice was published in "Tarun Bharat, Solapur" newspaper dated 03/05/2023 calling upon the objections from the public at large. However, despite issuance of citation and paper publication, no one has turned up to contest the instant application.

4. I have heard the learned advocate for the applicants at length. In order to establish their claim, the applicants have filed death certificate of deceased as follows :-

Sr. No.	Name of deceased	Exhibit No.
1	Laxmiben Devshi Dharamasi	13
2	Devsu Damji Dharamasi	14
3	Punshi Damji Dharamasi	15
4	Damyanti Punshi Dharamasi	16
5	Sushila Chapsi Dharamasi	12
6	Laxmi Premchand Dharamasi	17
7	Chapsi Damji Dharamasi	18
8	Lalji Damji Dharamasi	19
9	Bhavika Bharat Lapsiya	20
10	Jatin Lalji Dharamasi	21
11	Anjali Jatin Dharamasi	22
12	Ratanshi Damji Dharamasi	23
13	Devkaben Ratanshi Dharamasi	24
14	Tilak Ratanshi Dharamasi	25
15	Visanji Damji Dharamasi	26
16	Premchand Damji Dharamasi	27

5. On perusal of death certificates (Exh.13 to 27) it seems that the deceased no.1 to 16 have died on the date mentioned in their death certificate respectively. The applicants have filed Property Extract of City Survey No.4076 at Exh.28 and xerox of Aadhar cards of applicants.

6. The applicant no.12 namely Mahendra Visanji Dharamasi has filed an evidence affidavit at Exh.7. The applicant has reiterated the

contents of his application and the fact that, after the death of deceased Sushilaben Chapsi Dharamasi, the applicants are her only legal heirs and there are no other legal heirs to the deceased Sushilaben Chapsi Dharamasi except the applicants. The evidence has remained unchallenged. Applicants have also produced death certificate of deceased Sushilaben Chapsi Dharamasi who died on 05/12/2020. Further death certificate (Exh.18) of Chapsi Dharamsi shows that he died on 20/02/2002. On perusal of property card of City Survey No.4076 it reveals that the suit property has inherited to Sushilaben Dharamsi from her husband Chapsi Dharamsi.

7. In this situation it is necessary to consider provisions of section 14 of Hindu Succession Act. The provision is as follows :-

15. General rules of succession in the case of female Hindus.—(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or

daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

8. In the present matter the applicant on oath deposed that, the deceased Sushilaben has no issue during her lifetime. Therefore in the present matter as the property inherited to Sushilaben from her

husband provision of sub section 2(b) of section 15 of Hindu Succession Act will be applicable here. In view of said provision the said property will devolve upon the heirs of the husband of deceased Sushilaben. The applicants, in the application has given chart showing relation of applicants with the deceased Sushilaben And Chapasi Dharamasi.

Sr. No.	Name	Relation
1	Manoj Premchand Dharmasi	Son of brother of husband
2	Anil Premchand Dharmasi	Son of brother of husband
3	Navalben Murji Mota	Sister of husband
4	Laxmiben Lalji Dharmasi	Wife of brother of husband
5	Vipul Lalji Dharmasi	Son of brother of husband
6	Aarya Bharat Lapsiya	Daughter of brother of husband's daughter
7	Uday Punkshi Dharmasi	Son of brother of husband
8	Lata Tilakchand Cheda	Daughter of brother of husband
9	Nalini Mahendra Simad	Daughter of brother of husband
10	Damyanti Visanji Dharmasi	Wife of brother of husband
11	Sou. Charudatta / Charulata Ketan Lothaya Shah	Daughter of brother of husband
12	Mahendra Visanji Dharmasi	Son of brother of husband
13	Sou. Yogita Vipul Nagda	Daughter of brother of husband

9. As mentioned above the interest in property shall devolve on the heirs of the husband of deceased Sushilaben Chapsi Dharmasi.

Therefore it is necessary to consider the provision regarding the rules of a succession in the case of male.

8. General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:—

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.

10. Considering the contention in the application it seems that the husband of deceased Sushilaben Chapsi Dharmasi died leaving behind no Class-I heir. Therefore the property shall devolve on his Class-II heirs. Here the applicant no.4 Laxmiben Lalji Dharmasi is wife of brother of the deceased Chapasi, the applicant no.6 Aarya Lapsiya is a grand - daughter of the deceased Chapsis's brother and applicant no.10 is wife of the deceased Chapasi's brother. considering the relationship of the applicant with deceased Sushilaben Chapsi Dharmasi and her husband, according to the schedule of Hindu Succession Act, they are not Class-II heirs of deceased Chapsi Dharmasi. Therefore they are not entitled to get heirship certificate.

11. Here till today no one has appeared before the Court and raised objection to the present application. Therefore the evidence laid by the applicants remained unchallenged and therefore same is trustworthy and acceptable. The applicant no.12 on oath deposed that they are only legal heirs to the deceased Sushilaben Dharmasi. The documents are in support of the contentions of the applicants. Hence, considering the unchallenged testimony and the material on record, as well as

considering the fact that, no one has objected the applicants' claim, the applicants are entitled for heirship certificate.

12. The object of Bombay Regulation 1827 is to provide for formal recognition of heirs, executors and administrators and for the appointment of administrators and managers of property by the Courts.

Hon'ble Bombay High Court in the case of Re: **Ganpati Vinayak Achwal (MANU/MH/1485/2014)** has held that,

“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 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 indicates 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 the 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.”

13. Considering the material on record, the present application needs to be partly allowed in order to grant the heirship certificate in favour of applicants no.1 to 3, and 5, 7 to 9, 11 to 13 by recognizing them as heirs of the deceased Sushilaben Chapsi Dharamasi. Hence, I proceed to pass the following order:

ORDER

1. The application is partly allowed.

2. The applicant no.1 to 3 and 5, 7 to 9, 11 to 13 are hereby formally recognized as heirs of the deceased Sushilaben Chapsi Dharamasi who died on 05/12/2020.
3. Issue heirship certificate in the name of the applicants no. 1 to 3 and 5, 7 to 9, 11 to 13 on payment of necessary Court fees.
(Pronounced in open Court.)

Date: 27/10/2023.

(Smt. H.U.U. Patil)
4th Jt. Civil Judge Junior Division, Barshi.

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order

(a)	Name of the Stenographer	:	Y. V. Sital
(b)	Court	:	Smt. H.U.U. Patil, 4 rd Jt. Civil Judge, J.D.& J.M.F.C.Barshi
(c)	Judgment /Order signed by P.O. on	:	27/10/2023
(d)	Judgment /Order uploaded on	:	30/10/2023