

CNR. No. MHGA090001162022
M.J.C. No. 12/2022
Gangubai+1 -Vs- Lata +2
Order below Exh. No. 23



IN THE COURT OF JOINT CIVIL JUDGE (JUNIOR DIVISION),
CHAMORSHI
(Presided Over by Diksha D. Vighne)

M.J.C. No. 12/2022

- 1] **Gangubai Balluji Atram**
Age 75 years, Occ. Household,
- 2] **Balluji Buccha Atram,**
Age 78 years, Occ. Cultivation,
Both R/o.Hanuman Mandir Chowk
Ward No.2 Ashti,
Th. Chamorshi, Dist. Gadchiroli. --- **Applicants.**
- Versus-**
- 1] **Smt. Lata Tirupati Atram,**
Age 38 years, Occ. Household,
- 2] **Bhagarvi Tirupati Atram,**
Age 09 years, Occ. Education,
- 3] **Aditya Tirupati Atram,**
Age 06 years, Occ. Education,
All R/o. Ward No. 15 Vihirgaon,
Near the Indira Convent, Mul
Th. Mul, Dist. Chandrapur -- **Non-applicants.**

Appearance:-

For Applicants :- Learned advocate Shri. K.T. Munghate
For Non-applicants :- Learned advocate Shri. S.D. Bhadke

ORDER BELOW EXH.23

(Delivered on : 25th day of October 2023)

This is an application for brining legal representatives of applicant no.1 on record.

2. It is stated in the application that applicant had filed present application for seeking legal heirship certificate of deceased

Tirupati Atram. During the proceeding of this application applicant no.1 Gangubai Balluji Atram was died on 13-05-2023. Therefore, applicant no.2 has filed this application to bring on record legal representatives of deceased applicant no.1 on record. Legal heirs of deceased i.e. husband is already on record as applicant no.2 as well as heirs of deceased son Tirupati are also on record as Non-applicants. However, other legal heirs of deceased Gangubai are not on the record. Therefore, heir namely Shankar Balluji Atram i.e. son of deceased applicant no.1 and Jijabai Dashrath Soyam i.e. daughter of deceased applicant no.1 shall be bring on record as legal representatives of deceased applicant no.1.

3. After receipt of this application. Learned advocate for Non-applicants have appeared and filed their objection to this application. It is stated by him that the proposed legal representatives cannot become the legal heirs of Tirupati Atram. The present proceeding is regarding legal heirship of deceased Tirupati Atram. When Class-I heirs of deceased Tirupati are alive then no question will arise to bring Class-II heirs of deceased on record. As well as, when Class-I heirs are alive then Class-II heirs have no rights to proceed this case and there is no such provision. Therefore, it is submitted by him that the proposed legal representatives are only legal representatives of Gangubai Atram but they are not the legal representatives of Tirupati Atram. Therefore, he has submitted to reject this application with cost.

4. It is submitted by learned advocate for applicants that when Tirupati Atram was died that time Gangubai Atram i.e. deceased applicant no. 1 was alive. Therefore, she was entitled for share in the movable and immovable property of deceased Tirupati Atram. Now, after her death her legal representatives are entitled for her share in the property of Tirupati Atram. Therefore, he has prayed for grant of permission to bring legal representatives of deceased Gangubai Atram

on record.

5. On the other hand, learned advocate for non-applicants has submitted that non-applicants are Class-I heir of deceased Tirupati Atram. When applicant no.1 was alive that time she was also a Class-I heir of Tirupati Atram. Therefore, she was entitled to be declare as legal heir of deceased Tirupati Atram. But, now the circumstances has change and the proposed legal representatives of Gangubai are not entitled to be declare as legal heir of deceased Tirupati Atram. Therefore, he has prayed for reject this application.

6. Perused application and say thereon. Heard, learned advocates for both side. After hearing rival submission following points are arise for my determination. There findings alongwith reason are as follows :-

Sr. No.	Points	Findings
1.	Whether right to sue survives in the proposed legal representatives of deceased applicant no.1?	No
2.	Whether proposed legal representatives of deceased applicant no.1 are entitled to be bring on record ?	No
3.	What Order ?	Application is rejected.

Reasons

As To Point No. 1 to 3 :-

7. Considering the rivals submissions of both side it is required to reproduced Rule I of Order XXII of C.P.C as follows -

1. **No abatement by party's death, if right to sue survives-** The death of plaintiff or defendant shall not caused the suit to abate if the right to sue survives.

On the plain reading of Rule 1, it is seen that if a party to the suit

is died then on the death of that party the suit will not abate against that party if the right to sue survives in the legal representatives of that deceased party.

8. On perusal of record it is seen that the present proceeding is Miscellaneous Application filed by applicants for receiving legal heirship certificate in the name of applicants and non-applicants for being the legal heirs of deceased Tirupati Balluji Atram. For the purpose of family pension and other official work. The question which has arisen in the present application is whether the right to sue in this miscellaneous application survives in the legal representatives of Gangubai Atram. It is admitted position that applicant no.1 and applicant no.2 are mother and father of deceased Tirupati Atram as well as non-applicant no.1 to 3 are wife and children of deceased Tirupati Atram.

9. As per the submission of learned advocate for applicants, before death of applicant no.1 she was entitled for share in the property of deceased Tirupati Atram. Now, after death of applicant no.1 her legal representatives are entitled for her share in the property of deceased Tirupati Atram. I would like to mention here that the present proceeding is regarding grant of legal heirship certificate. Granting of legal heirship certificate is a right to formally recognized by the court as legal heirs of deceased. After the death of deceased Tirupati, his mother, wife and children were being a Class-I heirs were entitled to be formally recognized as legal heirs of deceased. But, in the present miscellaneous proceeding there is no mention of movable or immovable property of deceased Tirupati Atram for which applicants and non-applicants were entitled. The purpose which is stated in the application is only for family pension and other official work. Now, it has to be considered whether legal representatives of deceased applicant

no.1 are entitled for formally recognized as legal heirs of deceased Tirupati Atram for family pension and other official work. The answer is no because the proposed legal representatives of applicant no.1 and 2 are brother and sister of deceased Tirupati Atram. They are Class-II heirs of Tirupati Atram. The present proceeding is filed only for formally recognized as legal representatives of deceased Tirupati Atram and not for partition of his property. Therefore, the submission of learned advocate for applicants that proposed legal representatives are entitled for share of deceased applicant no.1 does not inspire confidence of this Court. The right of deceased applicant no.1 to be recognized as legal heirs of deceased Tirupati Atram has vanish with her death. Her legal representatives cannot be recognized as legal representatives of deceased Tirupati Atram on her behalf. Therefore, I hold that in the present application the right to sue does not survives in the proposed legal representatives of deceased applicant no.1. Thus, in the result proposed legal representatives are not entitled to be bring on record as legal representatives of deceased applicant no.1. Therefore, considering aforesaid reason, I pass following order.

ORDER

Application is rejected.

Date: 25.10.2023

(Diksha D. Vighne)
Jt Civil Judge (Jr.Dn.),
Chamorshi.