

CNR NO. MHGA090001162022

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

Other Misc. Application No. 12/2022

Gangubai Balluji Atram + 1 ----- **Applicants**

-Versus-

Lata Tirupati Atram + 2 ----- **Non-applicants**

Order Below Exh. 28

(Passed on 24/07/2024)

This is an application filed by applicant Nirmala Maraskolhe for her appointment as Guardian Ad-litem of the non-applicant no.2 and 3 under Order XXXII Rule 3 r/w. Section 151 of C.P.C.

2. It is stated by applicant that applicant no. 1 and 2 have filed this case for grant of legal-heirship on the name of applicants as well as non-applicant no. 1 to 3. The applicant no.1 is the mother and applicant no.2 is the father of deceased Tirupati Balluji Atram. The non-applicant no.1 is the wife of deceased Tirupati Balluji Atram and non-applicant no.2 and 3 are daughter and son of deceased Tirupati Balluji Atram who was died on 31-05-2019 at Manwatkar Hospital, Chandrapur during treatment as he was serious due to accident happened at Ashti-Allapalli Road. At the time of his death, husband of non-applicant no.1 was in service as Forest Guard in Forest Office Allapalli.

3. It is further stated by applicant that during pendency of this case applicant no.1 died and thereafter the mother of the non-applicant no.2 and 3 i.e. non-applicant no.1 was also died on 19-12-2023. Therefore, non-applicant no.2 and 3 are only surviving legal heir of deceased Tirupati Balluji Atram and Madhuri Atram. The non-applicant no.2 and 3 are in need of legal heirship certificate for applying for

compassionate appointment as well as other official purpose.

4. It is further stated that the applicant in this application is the mother of deceased non-applicant no. 1 and grand-mother of the non-applicant no. 2 and 3. The non-applicant 2 and 3 are minor having age 10 and 6 respectively and are residing with the applicant at Mul. The non-applicant no. 2 and 3 are under care of applicant. The present applicant being mother of non-applicant no.1 and grand-mother of non-applicant no.2 is aware about all facts in respect of the present proceeding as well as previous proceedings. The applicant have no any interest and therefore no concern about having adverse interest against the non-applicant no. 2 and 3. The applicant is ready to act as guardian of the non-applicant no. 2 and 3. Therefore, it is necessary for proper adjudication of the case to appoint the applicant as guardian of the non-applicant no.2 and 3. As well as, applicant is further ready to abide any condition imposed by this court. Hence, he has prayed for appointing her as guardian Ad-litem of non-applicant no.2 and 3.

5. After receipt of this application, applicant no.2 in this case has filed his reply at Exh. 29. It is stated by applicant no.2 that applicant Nirmala is the mother of non-applicant no.1 and grand-mother of non-applicant no.2 and 3. Applicant is a greedy person for money. She has tried to destroy marriage of her daughter and became successful in it. Applicant has always told her daughter different method for causing death of Tirupati by phone for getting service on compassionate ground and to fulfill her financial need. Once, Lata @ Madhuri had glass in the food of Tirupati on the say of this applicant. That fact came to the knowledge of Tirupati by the recording of phone call. Therefore,

Tirupati scolded Madhuri and therefore she went to her paternal home. Thereafter, Madhuri had filed case against Tirupati under Domestic Violence Act in the Court of Mul. That time, non-applicant no.2 and 3 were residing at the house of Ballu Atram and Shankar Atram. Shankar Atram and his wife took care of non-applicant no.2 and 3 and admitted them in the English Medium School at Ashti. The Madhuri live at her parental home for two and half year. Thereafter, there was compromised between Madhuri and Tirupati. Thereafter, Madhuri came at house of Tirupati for co-habitation but there also she was not taking care of non-applicant no. 2 and 3. During this period Tirupati was died in accident. After the death of Tirupati, Madhuri left the house by taking all money, important documents, bank passbook, A.T.M. Card, Valuable Jewellery and left the children at the house of applicant and Shankar Atram. The present applicant withdraw all money from the A.T.M. Card of Tirupati with the help of Madhuri. Thereafter, she had filed report against applicants and Shankar Atram at Police Station, Ashti and took away the children with her At Mul. Non-applicant no.1 was not taking care of her children at Mul also. The applicant through Lata had filed application for getting legal heirship certificate to get money of deceased Tirupati Balluji Atram. Due to greediness of applicant, her daughter, non-applicant no.1 become unsound mind. This applicant did not take care of non-applicants and therefore due to negligence of this applicant, non-applicant no.1 was died. The applicant no.2 in this case is a father of deceased Tirupati Balluji Atram and grand-father of non-applicant no. 2 and 3. As well as, Shankar Atram is the real brother of Tirupati Balluji Atram. When Lata left the house of Tirupati that time non-applicant no.2 and 3 were living with applicants and Shankar Atram. They had take care of non-applicant no.2 and 3 and also co-operated in their

education. Non-applicant no. 2 and 3 are legal heirs of deceased Tirupati and for getting money of Tirupati she has filed this application on false contention. Hence, on the aforesaid ground he has prayed for rejection of this application.

6. Perused application and say thereon. Heard, both sides. It is seen that the present application has filed by applicant no.1 Gangubai Atram and applicant no.2 Balluji Atram for legal heirship certificate. It is the part of record that applicant no.1 was died during the pendency of proceeding and non-applicant no.1 was also died during the pendency of proceeding. Applicant has filed this application for appointing her as Guardian Ad-litem of non-applicant no. 2 and 3 because they are minor and cannot proceed with the case as there own. It is the admitted fact that applicant Nirmala Maraskolhe is a paternal grand-mother of non-applicant no. 2 and 3. It is alleged by applicant no. 2 in his say that applicant Nirmala has adverse interest against non-applicant no.2 and 3. However, no such proof has filed by them regarding adverse interest of applicant against minor non-applicant no.2 and 3. It is admitted fact that now non-applicant no.2 and 3 are living with applicant Nirmala Maraskolhe at Mul. It is the simplicitor application for grant of legal heirship certificate. No orders will be passed regarding finance in this case. Even if applicant is appointed as guardian for the suit then also she will be restrained as per Order XXXII Rule 6 (1) of C.P.C. from receiving any money or other movable property without the leave of the Court. Therefore, I find that even if he is appointed as Guardian for the suit then also her appointment will not be against the interest of non-applicant no.2 and 3. The application of applicant is filed on affidavit that she has no interest in the matter in controversy in the suit adverse to that of the minor and that she is a fit person to be so appointed. The

father and mother of minors are already death. The natural guardian of minors are already party to this proceeding. Therefore, no notice were issued as per the Order XXXII Rule 3 (4) of C.P.C. Nothing has brought on record till now that minor has a guardian appointed or declared by competent authority. Therefore, I find that it is just and proper to appoint applicant Nirmala Maraskolhe as guardian Ad-litem of non-applicant no.2 and 3 for the proceeding of this case only to protect interest of minor non-applicant no. 2 and 3. Thus, I pass following order.

ORDER

1. Application is allowed.
2. Applicant Nirmala Maraskolhe is appointed as Guardian Ad-litem of minor non-applicant no.2 and 3 for the proceeding of this case.
3. Applicant is restrained from involving in any financial transaction on behalf of minor non-applicant no.2 and 3 as Guardian by using this order.

Date: 24.07.2024

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