

ORDER BELOW EXH.181.
(Passed on 13th August 2021)

This is an application filed by the applicants being legal heirs of original deceased plaintiff. They submit that, the original plaintiff *Suraji Doma Atram* died on 24.04.2021 at village *Matharjun (Dabali Pod)* leaving behind him the applicants as only surviving legal heirs. The application is filed within 90 days. So, they urged to bring their names on record as the plaintiffs.

2. Defendant Nos.7 & 8/4A & 4B have opposed application by filing say at Exh.183 inter-alia contending that, in reality deceased plaintiff was not *Suraji* and the applicants are not legal heirs of *Suraji Bhima Atram*. The applicants ought to have filed legal heirs certificate issued by the competent Court. Deceased defendant No.4 *Potibai* did not adopt alleged *Suraji* as a son. The deceased plaintiff had instituted this suit in the fictitious name of *Suraji* by personation. So, it was necessary to verify death certificate of alleged legal heirs certificate. The deceased plaintiff had instituted the suit based on false and fictitious adoption deed and grounds with a view to grab the suit property. The real name of deceased plaintiff was *Aaiyya Sonu Dandaje*. The name of his wife is *Chinnabai Aaiyya Dandaje*. These defendants have already pleaded these facts in detail at their written statement. As such, the applicants cannot be termed as legal heirs of deceased plaintiff. They have also submit that, the applicants will have to be directed to furnish certain documents for verification purpose. The real name of applicant No.1 is a *Chinnabai Aaiyya Dandaje*. The copies of R.C.S. No.03/2014 pending before the Civil Judge (Jr.Dn.),

Zari-Jamani are placed on record alongwith list (Exh.185). As such, these defendants have urged to reject application.

3. The remaining defendants have failed to file say, though reasonable time given. Even, an application for adjournment is not filed on their behalf. Hence, this application is proceeded without say against them.

4. Heard the learned advocate *Mr. A. E. Joshi* for defendant Nos.7 & 8/4A & 4B. He has argued almost all the facts, which are stated by these defendants in their say, as reproduced supra. He has also submitted that, the documents placed on behalf of these defendants alongwith list (Exh.185) may be taken into consideration while deciding this application. On the other hand, nobody present on behalf of the applicants and remaining defendants, when called out repeatedly till 03:10 p.m.. The case is more than ten years old. Hence, the application is taken up for disposal on merit.

5. I have gone through the record of the case, minutely. The suit is instituted for a decree of declaration that, the sale-deed dated 25.09.2008 executed by defendant No.4 in favour of defendant Nos.1 to 3 relating to the suit land Gat No.13 situated at *Mahadapur*, Tq. *Zari-Jamani* is null, void and not binding upon the plaintiff and the same may be cancelled. The plaintiff has also sought consequential relief of partition, perpetual injunction with restraining defendant Nos.1 to 8 from utilizing the sale proceed of said sale-deed with alternative relief that an half amount out of sale proceeding i.e. Rs.23,10,242/- may order to be given to him being owner of the suit land to that extent etc. No doubt, the crux

of the dispute in the suit in hand is that, whether the plaintiff by name *Suraji Bhima Atram* is/was adopted son of deceased defendant No.4 *Potibai* and on the basis of that character he has undivided half share in the suit land. Being material propositions, the burden is on above contesting defendants to prove that, whether plaintiff's father namely *Sonu Aaiyappa Dandaje* played fraud upon deceased *Potibai* in getting the adoption deed dated 11.02.1976 executed and registered in favour of the plaintiff by taking her to the Sub-Registrar Office on the pretext execution of mortgage deed to meets the requirement of agricultural loan.

6. It is significant to note that, on rival pleadings of the parties, the issues (recast) are casted at Exh.98 on 11.01.2019 and two additional issues also drafted on 08.11.2019. As such, the plaintiff or his legal heirs will have to prove that, he is/was adopted son of deceased defendant No.4 */Potibai*. Likewise, aforesaid contesting defendant also must have to establish alleged fraud played by deceased plaintiff's father while execution of alleged adoption deed against deceased said defendant in the light of issues casted at Sr. No.5 vide Exh.98. Therefore, I do not agree with an argument advanced on behalf of said contesting defendants that, if the present application is allowed, they will cause prejudice. Needless to say that, prayer made under this application is based on technical aspect for bringing legal heirs / representatives of deceased party as provided under Order XXII of the Code of Civil Procedure, 1908. Needless to say that, the death of the plaintiff or the defendant shall not cause the suit to abate, if the right to sue survives vide Rule (1) of this Order. No doubt, the

applicants have not placed on record either death certificate of original plaintiff or his legal heirs certificate issued by Local Police *Patil* or *Sarpanch*. However, the contents of this application are supported by an affidavit of applicant *Sambhudeo Suraji Atram*. Thus, it emerged on record by solemn affirmation by one of the applicant that, these applicants are only surviving legal heirs of deceased plaintiff. It worth to note that, when the Court made oral query with above two contesting defendants in presence of their learned advocate in open Court when today present before the Court, they have asserted that, the applicants are only surviving legal heirs of the plaintiff, who had instituted the suit by fictitious name *Suraji Bhima Atram* instead of his real name *Aaiyya Sonu Dandaje*.

7. In my opinion, the actual name of the plaintiff and genuineness of his claim as adoptive son of deceased defendant No.4 *Potibai Atram* are the facts require judicial determination after recording evidence of all contesting parties. However, an oral statement made by those contesting defendants make very clear that, the deceased person either *Suraji Atram* or *Aaiyya Dandaje* as the case may be who had instituted the present suit is now no more and survived by the applicants as his legal heirs. The application is filed within 90 days. Thus, in my opinion, the present application could be allowed even in absence of death certificate or legal heirs certificate. So far as the the documents placed on record by those defendants alongwith list Exh.185 are concerned, at the most that could be considered in due course. In my opinion, those documents will not have adverse impact against

this application at all, being have limited scope vide procedural Law, as discussed supra.

8. In view of forgoing discussion, I found much substance in the present application. I would like to make very clear that, whatever observations made under this order will not affect the merit of case. As such, the application will have to be allowed. Hence, I pass following order.

ORDER

- 1) The application (Exh.181) be allowed.
- 2) The applicants shall bring their name on record as plaintiffs and shall make compliance in all respect within 14 days from today.
- 3) The costs in cause.

Sd/-

(S. S. Budruk)

Civil Judge (Sr. Dn.),
Kelapur.

Date : 13.08.2021