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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.9478 OF 2014
WITH
CIVIL APPLICATION NO. 10947 OF 2012
IN
SECOND APPEAL NO. 270 OF 1990

Bhairu Jagtap (Died) LR Manik and Others

APPLICANTS

VERSUS

Rajendra Balbhim Kinikar & Another

RESPONDENTS

.....
Mrs. M. A. Kulkarni, Advocate for the applicants

Mr. A. S. Shelke h/f Mr. S. K. Shelke, Advocate for respondents

.....

[CORAM : N. W. SAMBRE, J.]

DATE : 15th JANUARY, 2015

ORDER :

1. Civil application No. 9478 of 2014 has been moved by the applicants seeking amendment. By way of amendment the appellants have sought to place on record verdict delivered by Civil Judge, Senior Division, Osmanabad in Miscellaneous Application No. 117 of 2009 whereby Shivaji Sopan Etbare, resident of Ambewadi, has been declared as legal representative of deceased respondent Rajendra Balbhim Kinikar. Said Court further held that the Will propounded by proposed applicant, who is respondent before this Court, is valid.

2. Civil application No. 10947 of 2012 is moved by the appellants seeking stay to order dated 13.10.2011 passed by Civil Judge Senior Division in Miscellaneous Application No. 117 of 2009.

3. At the time of hearing of present applications, Mrs. Kulkanri, learned counsel for the appellants submits that as there is alternate remedy available so as to raise challenge to the said verdict dated 13th October, 2011, delivered by Civil Judge, Senior Division, Osmanabad, present applications are not pressed. She seeks liberty to take up appropriate proceedings questioning legality and validity of the verdict dated 13th October, 2011 delivered by Civil Judge, Senior Division, Osmanabad. The motion / request stands granted with liberty as prayed for.

4. Both the civil applications stand disposed of.

[N. W. SAMBRE, J.]

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.....

[CORAM : N. W. SAMBRE, J.]

DATE : 15th JANUARY, 2015

ORDER :

1. By order dated 15th April, 2008, passed in civil application No. 563 of 2005 in present second appeal, this Court has made following observations:-

"2. Sole respondent Rajendra Balbhim Kinikar is dead as per the knowledge of the appellants. They have even produced certificate of death issued by the Grampanchayat office, Ruibhar, Taluka and District Osmanabad. The duty, as per the Civil Procedure Code, on the advocate for the respondent is just to inform death of the respondent, in case it comes to the

knowledge of the respondent. It is for the applicants/ appellants to enquire regarding legal representatives of the respondent and that duty cannot be cast on the advocate of the respondent.

3. In the circumstances, the appellants are given ten weeks time from today to enquire and bring on record the legal representatives of deceased Rajendra Balbhim Kinikar. In case of failure to bring legal representatives on record within a period of ten weeks, this Second Appeal shall stand disposed of as abated against sole respondent."

2. Period of ten weeks granted to the appellants stood expired some time in July, 2008.

3. It is claimed by the appellants that the appellants have taken steps by moving civil application No. 7341 of 2009, which prompted this Court to pass order directing learned Civil Judge, Senior Division, Osmanabad to determine status of legal representative of deceased respondent, by order dated 22nd June, 2011. According to appellants, in view of the same, the second appeals is not abated.

4. After the order dated 22nd June, 2011, the Civil Judge, Senior Division, Osmanabad has pronounced verdict on 13th October, 2011 declaring one Shivaji Sopan Etbare as legal representative of the deceased respondent. Since 13th October, 2011, the appellants herein have not taken steps for bringing said legal representative on record, but for filing civil applications No.10947 of 2012 and 9478 of 2014 for some different prayer.

5. Having regard to above, as the second appeal is already abated and the appellants herein have not taken any steps for setting aside abatement and for bringing legal heirs on record, learned advocate for the appellants seeks two weeks' time by way of last chance to take steps for setting aside abatement and bringing on record said legal representative as pronounced by the court of civil judge, senior division, Osmanabad on 13th October, 2011 in Miscellaneous Application No. 117 of 2009.

6. Failure to take steps at the end of present appellants shall result into dismissal of present second appeal without reference to the Court.

[N. W. SAMBRE, J.]