

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)

SECOND APPEAL NO. 979 of 2012

Shri Pandit Ramchandra Kulkarni,
Age 63 years, Occ. Retired,
R/at 12, Nanki, Ninad Cooperative
Housing Society Ltd.,
43/8, Vadgaonsheri, Pune

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APPELLANT
Org. Deft.NO.1

.. **Versus** ..

- 1] Shri Shrikant Ramchandra Kulkarni,
Age 56 years, Occ. Service,
R/at 1187/68, Shivajinagar,
Pune.
- 2] Shri Prabhakar Ramchandra Kulkarni,
Age 71 years, Occ. Service,
R/at C/o P.J.Deshpande,
Shivchhaya Building, Block No.1
Bungalow Ali, Gokhale Galli,
Roha, Taluka Roha, Distt. Raigad.
- 3] Sou. Kamal Nagesh Inamdar
(deleted)
- 4] Sou. Malati Madhav Tanksale,
age 76 yeas, Occ. Housewife,
R/at Ashirwad Bungalow,
Koregaon, Tal. Koregaon,
Distt. Satara.
- 5] Sou. Suman @ Sumitra Sudhakar Kulkarni
(deleted)
- 6] Sou. Ujwala Govindrao Panse,
Age 68 years, Occ. Housewife,

R/at Dani Wada, Saswad,
Taluka Purandar, Distt. Pune. ..

RESPONDENTS
RESPT. NO.1
Org. Plaintiff.

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Mr. Drupad S. Patil, Advocate, for appellant.
Mr. Shailesh S. Pathak, Advocate for Respondents

CORAM : R.K.Deshpande, J.
DATED : 29th JUNE, 2015.

ORAL JUDGMENT

Heard the learned counsels appearing for the parties.

2] **Admit** on the following substantial questions of law.

[K] Whether in facts and circumstances of the case, the courts below are justified in passing the decree for partition particularly when Defendant Nos. 3 & 5 died during the pendency of suit and hence, entire suit has abated?

[L] Whether on account of death of Defenant Nos. 3 and 5 and on account of fact that, their legal heirs are not brought on record by Plaintiff, the entire suit for partition will abate?

The learned counsel appearing for the respondents waives service of notice. He submits that Respondent No.1 – Shrikant Ramchandra Kulkarni is personally present before this

Court and makes a statement that the instructions have been provided to the counsel, for and on behalf of the respondents.

Heard finally by consent of the learned counsel appearing for the parties.

3] It is not in dispute that Defendant No. 3 Sou Kamal Nagesh Inamdar died on 10.07.2007, whereas Defendant No.5 Sou. Suman @ Sumitra Sudhakar Kulkarni died on 22.07.2001. Two deaths have occurred during the pendency of Special Civil Suit No. 834 of 1994. It was a suit for partition and separate possession and the legal heirs of the concerned defendants were not brought on record before the trial Court. The trial Court passed a decree on 30.12.2009 and the Civil Appeal No. 175 of 2010 was partly allowed by the lower appellate Court on 20.06.2012.

4] It is apparent that both the courts below could not have proceeded to decide the matter on its own merits without there being the legal representatives of the deceased brought on record before the trial Court. The decree passed by both the courts below being against the dead persons to some extent, cannot be sustained. Hence, the judgment and order

passed by both the courts below will have to be set aside with an order of remand. The substantial questions of law as are framed are answered accordingly.

5] In the result, the second appeal is allowed. The judgment and decree passed by the trial Court on 30.10.2009 in Special Civil Suit No. 834 of 1994 along with the judgment and decree passed by the lower appellate Court on 20.06.2012 in Civil Appeal No. 175 of 2010 is hereby quashed and set aside. The matter is remitted back to the trial Court to decide the Special Civil Suit No. 834 of 1989 on its own merits in accordance with law. The plaintiff is at liberty to file an application for bringing the legal representatives of the defendant Nos. 3 and 5 on record alongwith the application for setting aside abatement, condonation of delay etc. The appellant is agreeable that the legal representatives can be brought on record. In view of this, the trial Court shall decide the application in accordance with law and thereafter proceed to decide the matter on its own merits in accordance with law. The trial Court may also permit the parties to lead evidence, if any.

The parties to appear before the trial Court on 27th

July, 2015. The trial Court to decide the suit within a period of one year from the date of first appearance of the parties before it. No order as to cost.

(R.K.Deshpande, J.)

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Rvjalit/P.A.