

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2282 OF 2012

Ahmednagar Zilla Maratha Vidya Prasarak
Samaj, Ahmednagar. Through its Vice President ..PETITIONER

VERSUS

Ismail Mohammed Gavandi (Mistri)
(Since Deceased) Through L.Rs.
Jubeda ismail Shaikh and Another ..RESPONDENTS

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Mr. Ajinkya Deshmukh, Advocate holding for Mr. A.V. Hon,
Advocate for petitioner.

Mr. S.B. Khan, Advocate holding for Mr. M.B.W. Khan, Advocate for
respondent.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 7th MARCH, 2016**

ORAL ORDER :

1. This matter was heard at length on 04.03.2016. After hearing the learned Counsels for the respective sides, this Court had noted as below:-

(a) R.C.S. No. 309/1981 was filed by the petitioner-trust for seeking perpetual injunction against the original defendants in view of the disturbance created by them.

(b) The original defendants have passed away.

(c) Since the suit was for perpetual injunction and the original defendants have passed away, cause of action would not survive.

2. In the light of the above, it was put to the learned Counsel for the petitioner that in the event the legal heirs of the original defendants, start creating any disturbance with regard to the suit property, it would amount to a fresh cause of action and the petitioner-trust may then initiate fresh proceeding considering the same. The learned Counsel for the petitioner sought time to take instructions.

3. It is submitted today that the petitioner-trust would not desire to pursue this petition and the cause of action in relation to R.C.S. No. 309/1981. Liberty to prefer fresh proceedings in the event any of the legal heirs of the original defendants create any disturbance or give rise to any cause of action, may be granted.

4. The learned Counsel for the respondents submits that since the cause of action has extinguished with the passing away of the original defendant, if any fresh cause of action arises, the litigating sides may take out a fresh proceeding.

5. In the light of the above, this petition is disposed off by observing that in the event the petitioner is aggrieved by any act of disturbance of the present respondents or their legal heirs, the petitioner-trust may avail of a legal remedy as may be advised.

(RAVINDRA V. GHUGE, J.)