

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 519 OF 2015

IN

SECOND APPEAL NO. 137 OF 2004

MR. JOAQUIM MARTINHO GOMES.

... Applicant

Versus

MRS. TEREZA GOMES (SIN.DEC.)

REP.BY LEGAL HEIRS.,

... Respondent

Mr. A. F. Diniz and Mr. R. Menezes, Advocates for the applicant.
Mr. Ashwin D. Bhobe, Advocate for respondent nos. 1(a) and 1(b).

Coram:- F. M. REIS, J.

Date:- 12th February, 2016

P.C.

Heard Mr. A. F. Diniz, learned counsel appearing for the applicant and Mr. A. D. Bhobe, learned counsel appearing for the respondent nos. 1(a) and 1(b).

2. The above application has been filed for recall of the judgment passed in the above Second Appeal at the instance of the legal heirs of the deceased original respondent no.1 on the ground that when the above Second Appeal came to be disposed, the respondent no.1 had already expired.

3. Mr. Diniz, learned counsel appearing for the applicant submits that the respondent no.1 had expired on 19.01.2009 and that

the appeal had automatically abated as against the respondent no.1 as the legal heirs were not brought on record within the time prescribed. The learned counsel as such points out that the applicant is entitled to seek recall of the said judgment as the appeal was disposed of without bringing the legal heirs of the deceased respondent no.1 on record. The learned counsel further submits that the decree as far as the respondent no.1 is concerned, is accordingly a nullity.

4. On the other hand, Mr. A. D. Bhobe, learned counsel appearing for the original appellants submits that the original respondent no.1 has not filed a written statement in the suit nor was represented in the above appeal as the proceedings against the respondent no.1 was proceeding in the absence of the respondent no.1 as no representation was filed on behalf of the deceased respondent no.1. The learned counsel further points out that even though the appeal might have been abated against the respondent no.1 only the consequences in law would follow. The learned counsel as such points out that the question of recalling the order passed by this Court disposing of the above appeal would not arise at all. The learned counsel further points out that even the decree is only as against the respondent nos.5 and 6.

5. I have considered the submissions of the learned counsel and I have also gone through the records. The effect of a person who has died during the pendency of the appeal though he has not filed a

written statement in the suit need not be examined by this Court while considering the above application. Once it is shown that the respondent no.1 had expired in the year 2009 and the legal heirs of the deceased respondent no.1 were not brought on record within the time prescribed, the appeal stands automatically abated as against the deceased respondent no.1. The effect of such abatement in such decree is a matter which need not be gone into in the above application. Needless to say that the legal effect would naturally follow when the appeal stands abated as against the respondent no.1. Hence, no case is made out for recall of the judgment passed by this Court as the deceased respondent no.1 was served and did file a representation in the above appeal.

6. Subject to the above, the application stands rejected.

F. M. REIS, J.

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