

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 72 OF 2016

IN

SECOND APPEAL NO. 58 OF 2010

SHRI PURSO NARAYAN GOSAVI
(DECEASED) THROUGH LRS AND 8 ORS., ... Applicants
Versus
SHRI GANESH RAGHOBHA GOSAVI AND 3 ... Respondents
ORS.,

Mr. A. F. Diniz and Mr. S. Shet, Advocates for the applicant.
Mr. M. P. Almeida, Advocate for the respondents 3(a),(c),(e),(f),(g).

Coram:- F. M. REIS, J.

Date:- 22nd January, 2016

P.C.:

Heard Mr. A. F. Diniz, learned Counsel appearing for the applicant and Mr. M. P. Almeida, learned Counsel appearing for the respondents.

2. This is an application to recall the order dated 26th August, 2014 whereby this Court has dismissed the appeal as abated.

3. It is pointed out by Mr. Diniz, learned Counsel appearing for the applicants that the legal heirs of the deceased were already on record and that there was substantial representation of the estate of the deceased respondent and, as such, there was no reason to dismiss the appeal as abated. The learned Counsel further submits that in any event, the relief sought in the suit was for permanent injunction and, as such, there is no reason to dismiss such suit as abated.

4. Mr. M.P. Almeida, learned Counsel appearing for the

respondents, however, submits that the applicants had represented that the respondent No.1 had died bachelor though, according to him, the respondent No.1 was married. The learned Counsel further points out that as such, the appeal deserves to be dismissed as abated.

5. Having heard the learned Counsel and having gone through the records, whether the whole appeal has abated or not, would have to be examined after considering the nature of the reliefs sought and the subject matter of the dispute. There can be cases where the deceased person may not be a necessary party to such proceedings. There can be cases where there is substantial representation of the estate of the deceased and there can be also cases wherein the reliefs sought can be bifurcated. Such exercise can be done only after considering all the relevant aspects at the time of the hearing of the appeal. Even in suits for declaration, whether the relief sought was necessary or not, would have to be examined.

6. In such circumstances, I find that this aspect can be examined at the time of hearing the appeal on merits, keeping all such contentions of the respondents open. As the order sought to be recalled has not considered the said aspect, I find that in the interest of justice the order dated 26/08/2014 deserves to be recalled. Hence, I pass the following Order :

- (I) The Order dated 26/08/2014 stands recalled.
- (II) Second Appeal is restored to the file.

(III) Place the Second Appeal for final hearing next month.

F. M. REIS, J.

ssm.