

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****SECOND APPEAL NO. 267 OF 2014****ALONGWITH****CIVIL APPLICATION NO. 695 OF 2014****IN****SECOND APPEAL NO. 267 OF 2014****Ragunath Subrao Patil****..... Appellant****VERSUS****Shankar Krishna Teli & Ors.****..... Respondents**

Mr.V.S.Talkute, i/b. Mr.S.R.Ghanavat for the Appellant.

Mr.Umesh Mankapure, a/w. Mr.Vinod Sangvikar for Respondent Nos. 2 to 4.

CORAM : R.D. DHANUKA, J.**DATED : 29th JANUARY, 2016****P.C.**

Learned counsel appearing for the appellant invited my attention to the judgment of this court in case of *Ramrao Joti Godase & Ors. vs. Kisan Joti Godase & Ors. 2012 (4) ALL MR 360* and would submit that appellant no.1 in the proceedings before the lower appellate court had expired much prior to the date of delivery of the impugned judgment by the lower appellate court and thus appeal could not have been disposed of by the lower appellate court without bringing the legal heirs of the appellant no.1 on record and unless the order of abatement was set aside. Learned counsel appearing for the respondents in the present proceedings does not dispute the position that the original appellant no.1 had expired much prior to the date of the delivery of the judgment by the lower appellate court. He does not dispute that issue is concluded by the judgment of this court in case of *Ramrao Joti Godase (supra)*.

2. In view of these facts, the impugned order passed by the lower appellate court deserves to be set aside and remanded back.

3. I, therefore, pass the following order :-

(a) The impugned judgment and decree dated 24th March, 2014 passed by the learned District Judge – I, Sangli in Regular Civil Appeal No.103 of 2011 is set aside. The Civil Appeal No.103 of 2011 is restored to file and is remanded back for hearing and final disposal.

(b) It is made clear that the appeal can be heard only after an application for setting aside the abatement if any, and for bringing the legal heirs by the appellant no.1 on record is heard and is allowed by the lower appellate court.

(c) In view of the disposal of the second appeal, civil application if any, does not survive and is accordingly disposed of.

(d) It is made clear that this court has not expressed any views of the merits of the matter and the matter is remanded back only in view of the fact that one of the appellant had already expired much before the delivery of the impugned order passed by the lower appellate court.

(e) All contentions of both the parties are kept open.

[R.D. DHANUKA, J.]