

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 235 OF 2014
IN
FAMILY COURT APPEAL (ST) NO. 16409 OF 2014**

Johind Singh @ Jogindersingh
s/o Gurubachansing Kahaan. ... Applicant
V/s.
Mrs. Mahalaxmi Jogindersingh Kahaan ... Respondent

WITH

**CIVIL APPLICATION NO. 152 OF 2015
IN
FAMILY COURT APPEAL (ST) NO. 16409 OF 2014**

Mrs. Harcharan Kaur Kahaan & Anr. ... Applicants
Vs
Mrs. Mahalaxmi Jogihdersingh Kahaan. ... Respondent
...
Mr. Jignesh Shah for the Applicants in both applications.

**CORAM : A. S. OKA & A. A. SAYED, JJ.
DATE : 20 JULY, 2016.**

P.C. :

1. The Respondent in Civil Application No. 235 of 2014 filed a petition being Petition No. A-397 of 2003 in the Family Court at Bandra, against the Applicant in Civil Application No. 235 of 2014. By the impugned decree dated 17th February 2014, the said

petition was dismissed. The Applicant in Civil Application No. 235 of 2014 was Respondent in the said Petition No. A-397 of 2003, who died on 13th January 2015. Civil Application No. 152 of 2015 is filed by the Applicants who are claiming to be the legal representatives of the Respondent in Petition No. A-397 of 2003 for bringing their names on record of the Appeal.

2. Our attention is invited to the judgment and decree date 30th January 2015 passed by a Division Bench of this Court, by which Family Court Appeal No. 109 and 112 of 2014 preferred by the Respondent in Civil Application No. 235 of 2014, were finally decided. By the said judgment and decree, the Division Bench by setting aside the impugned judgment and decree dated 17th February 2014 passed in Petition Nos. A-397 of 2003 and B 51 of 2004 remanded both the petitions to the decision of the Family Court at Bandra. Though, a Special Leave Petition filed against the said judgment and decree dated 30th January 2015 of this Court is pending before the Apex Court, the judgment and decree dated 30th January 2015 has not been set aside. As the impugned judgment and

decree which is the subject matter of the present appeal stands set aside, the appeal itself is not maintainable. Accordingly, we dispose of both the applications. We, however, make it clear that we have made no adjudication on the question whether Applicants in Application No. 152 of 2015 can prosecute an Appeal for challenging the decree passed by the Family Court. All contentions of the parties in that behalf are expressly kept open.

(A. A. SAYED, J.)

(A. S. OKA, J.)