

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**CIVIL APPLICATION NO.2990 OF 2015
IN
FIRST APPEAL NO.961 OF 2010**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr.Sandeep Bhagwat for the applicant

Mr.H.H.Trivedi for the respondent

**CORAM : K. K. TATED, J.
DATED : 12/02/2016**

PC.:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by plaintiff for deleting the name of respondent no.1 Sundari P. Shetty who died on 5.11.2007.
- 3 The learned counsel for the applicant submits that legal heirs of deceased respondent no.1 are already on record as respondent nos.2, 3, 4 and 5. Hence, applicant may be permitted to delete the name of respondent no.1 from the cause title of First Appeal as well as pending Civil Application if any.
- 4 On the other hand the learned counsel for the respondent vehemently opposed the present Civil Application. He submits that during the pendency of

the suit No.3853 of 2007, respondent no.1 expired. To that effect, respondent specifically made averments in written statement. In spite of that applicant failed and neglected to take appropriate steps for bringing legal heirs on record of deceased respondent no.1. He submits that the suit itself was abated on the death of respondent no.1. He submits that Trial Court decided Suit No.3853 of 2007 by judgment and decree dated 5.3.2010. Hence, the judgment and decree passed by Trial Court is null and void. Hence, there is no substance in the present Civil Application.

5 Heard both the sides.

6 It is to be noted that in the present proceeding, applicant is seeking to delete the name of respondent no.1 who died on 5.11.2007 i.e. before passing the judgment and decree passed by Trial Court. It is to be noted that legal heirs of deceased respondent no.1 were already on record as respondent nos.2 to 5. Hence, there is no question of abatement of Suit.

7 Considering these facts I am of the opinion that applicant has made out a case for allowing the Civil Application. Hence, following order is passed:

a) Applicant is permitted to delete the name of respondent no.1 Sundari P. Shetty from the cause title of First Appeal No.961 of 2010 and pending Civil Application and treating other respondents as

legal heirs of deceased respondent no.1.

b) The Applicants are directed to carry out appropriate amendment within 4 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

c) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)