

JPP

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

SECOND APPEAL (ST.) NO. 34211 OF 2015

with

CIVIL APPLICATION NO. 1999 OF 2015

Mr. Shamrao Rajaram Dhanave

Since deceased through his heirs & legal
representatives

1. Meena Anil Lavand

Since deceased through her heirs & legal
representatives

1A. Mr. Shankar Anil Lavand & Ors. ... Appellants/Applicants.

V/s.

Malatibai Bhagwant Kulkarni

Since deceased through her heirs & legal
representatives

Smt. Shashikala Arvind Kulkarni & Ors. ... Respondents.

Mr. Ravindra Pachundkar for the Appellants in SA(ST.) 34211/15
and for the Applicants in CA 1999/15.

Mr. Dilip Bodake for the Respondents 2 to 7 in SA(ST.) 34211/15.

Mr. V.S. Talkute for Respondents 1A to 1C in SA(ST.) 34211/15.

CORAM : N.M. Jamdar, J.

05 July, 2016.

P.C. :-

Heard learned Counsel for the parties.

2. It is the contention of the Appellants in this Second Appeal that the Judgment and decree passed by the Lower Appellate Court is not binding on the Appellants as they were not brought on record. The Appellants are the heirs of deceased Meena Anil Lavand, who was Defendant No.2(D) in the proceedings. It is the contention of the Appellants that for not bringing the heirs of Respondent No.2(D) the entire Appeal has abated. Apart from this position, the Judgment and decree passed by the learned District Judge is also challenged on merits. As far as the challenge on merits is concerned, it was substantially argued and advanced in the Appeal No. 710 of 2014 filed by the rest of the Defendants and is disposed of today. The reasons while disposing of the said Appeal will apply to the present Appeal as well.

3. As far as the contention that the proceedings had abated for not bringing the heirs of Respondent No.2(D) on record is concerned, an affidavit-in-reply is filed on behalf of the Respondent - Plaintiffs on 6 January 2016 annexing certain documents and revenue entries.

4. Perusal of this affidavit-in-reply, which has gone unanswered, demonstrates that the Defendant No.2(D) - Meena Anil Lavand was daughter of Shamrao Rajaram Dhanave, who was Defendant No.2. Defendant No.2, during the pendency of the Appeal sold his 5 ana and 4 paisa share in the suit property in favour of other Defendants. This being the position, the person through whom the present Appellants are claiming right to prosecute the Appeal has already divested himself his right in the property during the pendency of the Appeal in favour of other Defendants who are already on record.

5. The learned Counsel for the Appellants placed reliance on the decision of the learned Single Judge of this Court in the case of *Smt. Krashnabai Parashram Vaidya & Ors. v/s. Shaikh Yusuf Hasan Khatik & Ors.* reported in *2011 (1) All M.R. 818* to contend that in the Suit for specific performance if legal heirs of co-sharer was not brought on record, then the Suit abates. As a pure proposition of law, the learned Counsel for the Appellants may be justified in relying on this decision, but the factual matrix of the said decision would show that it was not a case as the one at hand where the predecessor of such party had divested himself of right, title and interest in the property. That being the position, there is no question of entire Suit abating.

6. In the circumstances, the contentions advanced that the proceedings should have been considered as abated in view of not bringing heirs of Defendant No.2(D) on record, cannot be accepted. No substantial question of law arises in this Appeal. The Second Appeal (St.) No. 34211 of 2015 is dismissed. The Civil Application stands disposed of accordingly.

(N.M. Jamdar, J.)