

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 364 OF 2016
IN
FIRST APPEAL (ST.) NO. 34377 OF 2015

Ramchand Bhatia ... Appellant
(since Deceased)

1A. Krishnakumar Ramchand Bhatia

Vs.

Assanand J. Bhatia ... Respondents
(since Deceased)

1A. Kantabai A. Bhatia & Ors.

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Mr.Pankaj Sawant a/w. Mr.N.B.Amin i/b. M/s. B.Amin & Co. for the Appellant.

Mr.Aditya Mehta a/w. Ms.Vileena Mirase and Ms.Meghna Mehta i/b. M/s. Shah & Sanghavi for respondents.

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CORAM : MRS.MRIDULA BHATKAR, J.
DATE : FEBRUARY 9, 2016.

P.C.:

1. In this appeal the order dated 4th November, 2015 passed by the Learned Ad-hoc Judge, City Civil Court, Mumbai is challenged by said order. The learned Judge has observed that as the amendment were not carried out the proceeding stood abated.

2. Learned Counsel for the appellant submits that he is filed suit for partition as his father expired and therefore he moved a Chambers Summons that he be added as a party to the proceeding. The learned Judge submitted that while hearing the said Chamber Summons

No. 2877 of 2014 the amendment was allowed by the learned Judge of the City Civil court Mumbai but its order dated 21st October, 2015 and directed that the applicant to substitute his sister and as legal representatives of deceased plaintiff. The Court also further ordered that amendment to be carried out in the title clause of the plaintiff on or before fixed date. The matter was scheduled on 4th November, 2015.

3. The learned Counsel for the appellant submits that till 4th November, 2015 he could not carry out the amendment because the certified copy was issued to him on 29th October, 2015 and thereafter he could not call his sister who is resident of Delhi to Mumbai and hence could not carry out amendment as per the earlier order in the plaint. Thus the order passed by the Court is to be set aside.

4. Learned Counsel for the respondent submits that order by the Learned Adhoc Judge of the City Civil court is legal and this appeal is to be appreciated under Order 22 Rule 9. He submits that no appeal lies against order of abatement.

5. This order cannot be challenged by way of first appeal and it is to be challenged under revision. By consent of both parties it is converted into Civil Revision Application (CRA). The Registry to take note and number it accordingly and to be placed before the appropriate bench.

(MRS.MRIDULA BHATKAR, J.)