

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

FIRST APPEAL NO.2551 OF 2011

Shri Girish Ramraj Alone & anr. ... Appellants

Vs.

Shri Ashok Daultarao Gore & Ors. ... Respondents

Mr.Tushar N. Sonawane for the Appellant No.2
Mr.Piyush N. Shah for Respondent Nos.1, 2, and 4 to 6

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: AUGUST 10, 2017**

P.C. :

1. This is a First Appeal is of 2009 and is pending on the file for admission. Yesterday, the matter was called out and the learned Counsel for the appellants was not present and so, the matter was fixed for today.
2. Today, Mr.Sonawane, the learned Counsel for the appellant is present and has submitted that though the appeal was filed in the name of one Girish Alone and Mohan Tike, Mr.Girish Alone did not take interest and did not want to pursue the matter and, therefore, the appellant Mohan Tike has prayed for transposition of appellant No.1 as respondent No.7 and the same was allowed by

order dated 26.8.2014 passed by this Court. However, after going through the record of the appeal, no transposition was carried out pursuant to the said order. As on today, Girish Alone remains as appellant No.1. Mr.Sonawane has admitted that the amendment pursuant to the order dated 26.8.2014 was not carried out. He produced a letter dated 17.2.2014 written by him to appellant No.2 giving a status of the matter and the orders passed therein and also informing him that he had not received instructions from the appellant No.2 and, therefore, he gave an ultimatum to appellant No.2 that in the even of failure of contact from appellant No.2, he would prefer discharge from the matter on the next day. On query, the learned Counsel informs the Court that thereafter, no steps were taken by him.

3. Learned Counsel for respondent has submitted that the appeal does not survive as new trustees have taken over the charge and the respondents who are shown as trustees especially Nos.2 to 7 are not the trustees of the concerned trust as some of them are either retired or some of them are not holding charge as trustees.

4. The original of the letter dated 17.2.2014 is taken on record and marked 'exhibit 1' for identification purpose. In view of the submissions made by the learned Counsel for both the sides, it appears that appellant No.2 is not interested in prosecuting the matter. Mr.Sonawane submitted that he has tried contacting the instructing middleman who informed him that appellant No.2 is unwell.

5. Be that as it may, this matter is pending for admission since 2001 and no steps are taken by the appellants. In view of the submissions of the learned Counsel for the respondents, which are not controverted by the learned Counsel for the appellants, the appeal is dismissed.

6. In view of the dismissal of the First Appeal, Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)