

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL APPLICATION NO.1853 OF 2008****IN****SECOND APPEAL NO.989 OF 2005**

Pramod Sadashiv Mutalik-Desai

by his Power of Attorney Shri

Ramakant Sadashiv Mutalik-Desai ...Applicant/Orig. Appellant

vs.

Shri Ganpat Rama Satape & Ors.

...Opponents

(Original Respondents)

WITH**CIVIL APPLICATION NO.22 OF 2017****IN****SECOND APPEAL NO.989 OF 2005**

Mukesh Sharad Shirpurkar

...Applicant

In the matter between

Pramod Sadashiv Mutalik-Desai

by his Power of Attorney Shri

Ramakant Sadashiv Mutalik-Desai ...Appellant

vs.

Shri Ganpat Rama Satape & Ors.

...Opponents

(Original Respondents)

....

Mr. P.J. Thorat, for the Applicant.

Mr. M.R. Suryawanshi, for Respondent No.1, 2A to 2C.

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CORAM : S.C. GUPTE, J.**DATED : 27 FEBRUARY 2017****P.C. :**

. Heard learned Counsel for the parties.

2. Civil Application No.1853 of 2008 is for recall of a self-operative conditional order of dismissal, by which the present Second Appeal stood dismissed for non-compliance with office requisitions. Whilst this Civil Application was pending, the sole Appellant died and his legal heirs are sought to be brought on record by the companion application, namely, Civil Application No.22 of 2017. There is a delay of about 5 years in taking out this application for bringing legal heirs on record. The delay is explained on the ground that since the appeal had already stood dismissed and an application for restoration was pending before this Court, the legal heirs of the Appellant were under an impression that as a matter of fact, the appeal would have to be restored first and then the legal heirs of the deceased could be brought on record.

3. On these facts, the application for bringing legal heirs on record deserves to be allowed. So also, in the facts stated in the Civil Application, the Civil Application for recall of the dismissal order and restoration of the Second Appeal, also deserves to be allowed.

4. Learned Counsel for the contesting Respondents states that the application for bringing legal heirs on record is on the footing that the sole Appellant executed a will bequeathing the suit property in favour of the heirs sought to be brought on record and that without obtaining a suitable representation to the estate by way of a probate or letters of administration with the will annexed, no representative character can be claimed to the estate of the deceased. This question, however, reflects on

the merits of the claim made by the legal heirs of the Appellant, who are sought to be brought on record, and can be contested at the hearing of the Second Appeal.

5. With this clarification, Civil Applications are allowed in terms of prayer clauses (a) and (b) of Civil Application No.1853 of 2008 and in terms of prayer clauses (a), (b) and (c) of Civil Application No.22 of 2017. The amendments to be carried out within two weeks.

(S.C. GUPTE, J.)