

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLN. (S) NOS. 1006 OF 2017, 1007 OF 2017 AND 177 OF 2016

IN
SECOND APPEAL NO. 13 OF 2013

Kisan s/o Janba Khadilkar and others

-vs-

Sitaram s/o Raghoba Khadilkar and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.Choube, counsel h/f Mr.A.A.Naik, counsel for the appellants.
Mr.G.M.Shitut, counsel for respondent Nos.1 (A,B)
Mr.M.V.Rai, counsel for respondent No.1(C to F).
Mr. H.A.Deshpande, counsel for respondent Nos.8, 11 and 16.

CORAM : V. M. DESHPANDE, J.

DATE : 31.10.2017.

Heard Shri Choube, the learned counsel holding for Shri A.A.Naik, the learned counsel for the appellants, Shri G.M.Shitut and Shri Mahesh Rai, the learned counsel for the proposed legal representatives and Shri H.A.Deshpande, the learned counsel for the respondent Nos.8, 11 and 16.

These three applications are disposed of by this common order.

The present second appeal is admitted on 11/11/2014. On 08/02/2016 learned counsel for the respondent No.1-Sitaram Raghoba Khadilkar filed a pursis on record giving intimation that respondent No.1-Sitaram Raghoba Khadilkar expired on 03/09/2015. On getting such information about the death of respondent No.1, application which is registered as Civil Application (S) No.177 of 2016 is moved on 25/02/2016 for bringing the legal representatives

of deceased respondent No.1-Sitaram Raghoba Khadilkar on record.

For moving the application for bringing the legal representatives on record, there was a delay of about 87 days. Consequently, the appellants moved an application i.e. Civil Application (S) No.1006 of 2017 for condonation of delay for moving the application for bringing the legal representatives of deceased respondent No.1 on record. Similarly, Civil Application (S) No.1007 of 2017 is also moved by the appellants for setting aside abatement, if any.

Notices on these three applications were issued to the proposed legal representatives of deceased respondent No.1- Sitaram Raghoba Khadilkar. Those notices are duly served upon the legal representatives. Shri Shitut, the learned counsel puts his appearance for the legal representatives, who are styled as respondent Nos.1-A and 1-B. Whereas Shri Mahesh Rai, the learned counsel puts his appearance for the legal representatives, who are styled as respondent Nos.1-C to 1-F. These legal representatives are widow, sons and daughters of deceased respondent No.1. After the death of original respondent No.1, cause of action survives against them. The learned counsel Shri Shitut and Shri Mahesh Rai fairly submitted that they have no objection for allowing the application for condonation of delay and for setting aside abatement. Similarly, learned counsel Shri H.A. Deshpande also submits that no prejudice will be caused to the respondents to whom he is representing if these applications are allowed. Consequently I pass the following order.

ORDER

- (1) Civil Application (S) No.1006 of 2017 is hereby allowed. The delay of 87 days for moving the application for bringing the legal representatives of deceased respondent No.1-Sitaram Raghoba Khadilkar on record is hereby condoned.
- (2) Civil Application (S) No.1007 of 2017 is allowed. The abatement *qua* respondent No.1-Sitaram Raghoba Khadilkar is set aside.
- (3) Civil Application (S) No.177 of 2016 is allowed. The legal representatives of deceased respondent No.1-Sitaram Raghoba Khadilkar are allowed to be brought on record whose names are mentioned in paragraph No.5 of the application.

The learned counsel for the appellants is directed to amend the cause title of the appeal memo incorporating the names of the legal representatives of deceased respondent No.1 as respondent Nos.1-A to 1-F. Respective counsel Shri G.M.Shitut and Shri Mahesh Rai waive service of the second appeal on merits on behalf of respondent Nos.1-A to 1-F.

Applications are allowed and disposed of.

JUDGE