

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 309 OF 2017

Shri Harish K. Patil

..Applicant

Vs.

Shri Nandan K. Patil and Another

..Respondents

Mr. Sugandh Deshmukh a/w Mr. Pawan Dhore, Irvin D'souza, for
the Applicant.

Mr. Kuldeep V. Nikam, for the Respondents.

CORAM :- B.P.COLABAWALLA, J.

DATE :- NOVEMBER 26, 2018.

P. C.:

Rule. Respondents waive service. By consent of
parties, Rule made returnable forthwith and heard finally.

2 This Civil Revision Application has been filed by the
Applicant challenging the judgment and order dated 10th
January, 2017 passed below Exhibit-44 in Special Civil Suit No.
217 of 2013. Exhibit-44 was an application filed by the Applicant
herein for bringing himself on record as the legal heir of the sole
Plaintiff who expired on 19th September, 2016. This Application

of the Applicant was dismissed by the Trial Court on the sole ground that the cause of action does not survive to the Applicant.

3 On going through this order, I find that this order is wholly unsustainable. The application that was made before the Trial Court was simply for bringing the Applicant herein on record in place of the deceased Plaintiff. It is not in dispute that the Applicant herein is the legal heir and representative of the deceased Plaintiff. It is his case that the suit property and which was claimed by the deceased Plaintiff to be his self acquired property, was bequeathed to the Applicant in its entirety and excluding the Defendant who is the other son of the deceased Plaintiff. Further, it is nobody's case that this amendment is sought for after the trial had commenced. This being the case, I think that the Trial Court was clearly in gross error when it rejected the application of the Applicant for bringing himself on record. This being the case, the impugned order is set aside and the Applicant's application (Exhibit-44) is allowed.

4 It is made clear that on the merits of the matter, I have not opined anything and all contentions of the Defendants-Respondents herein are kept open in that regard including

whether the cause of action *qua* the Applicant survives or otherwise.

5 Rule is made absolute in the aforesaid terms. However, there shall be no order as to costs.

(B. P. COLABAWALLA, J.)