

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1562 OF 2013
with
REJECTED CASE NO.138 OF 2013
(CIVIL APPLICATION ST. NO.17549 OF 2012)
IN
SECOND APPEAL NO.638 OF 1995

Surendra Shridhar Parkar

... Applicant

Vs.

Francis Salu Fernandes & Ors.

... Respondents

Ms.S.D. Ghaisas for the Applicant

Mr.Swaroop Karade i/b S.S. Shah for Respondent Nos.1A to 1H

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: APRIL 17, 2018

P.C.:

1. The Civil Application No.1562 of 2013 is moved for setting aside the order of dismissal dated 14.12.2012 passed in Civil Application (Stamp) No.17549 of 2012 i.e., R.C. No.138 of 2013. Further, Rejected Case No.138 of 2013 (Civil Application St. No.17549 of 2012) was made for bringing the legal representatives of 2a, i.e., Vilas Ramchandra Parkar and 2b, i.e., Laxman Ramchandra Parkar, both of whom have died and respondent Nos.2(a1) to 2(a5) are the common legal heirs of respondent Nos.2a

and 2b. It is also prayed that the dismissal order of the Second Appeal is to be set aside. However, the learned Counsel submits that the exact date of the death of respondent Nos.2a and 2b was not known and hence, the office objection was raised by the Registry. The said objection was not removed within the stipulated time. Hence, the conditional order was passed on 14.12.2012.

2. The learned Counsel submits that she has served all the proposed respondents, who are the legal heirs of respondent Nos.2a and 2b. She has produced service. She points out exhibit A dated 2.5.2012 which is issued by the Police Patil of the village Chindar, Taluka Malvan, District Sindhudurg, where it is certified that VilasParkar expired 2 years back and Laxman Parkar died 3 years back from the date of the certificate. However, the Police Patil confirms that there is no mention of the date of death of Vilas Parkar and Laxman Parkar in the death register.

3. In view of the above, the application No.1562 of 2013 is allowed. The order of dismissal dated 14.12.2012 of Civil Application St. No.17549 of 2012 is hereby set aside and the said application is restored to its original file. The office objection with regard to the dates of death of Vilas and Laxman is dispensed with.

4. The delay in filing the application for bringing on record the legal heirs is allowed and the legal heirs i.e., respondent Nos.2(a1) to 2(a5) are allowed to be brought on record. The amendments be carried out within two weeks. If the amendments are not carried out as stipulated above, the appeal to stand dismissed without reference to the Court.
5. The Civil Applications stand disposed of accordingly.

(MRIDULA BHATKAR, J.)