

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 124 OF 2017

Shri R. Ganeshan Chattiya (since deceased)	
Through LRs.	
Prakash Ganesh Chattiya, and another.	...Applicants
<i>Versus</i>	
M/s. Sarvottam Construction,	
Through Partner Shri Indrakumar	
Bhimraj Chached	...Respondents

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Mr.Vishal Kanade i/b. Sanjay S. Gawde, Advocate for the Applicants.
Ms.Sayali Bhaidkar i/b. Manjiri S.Parasnis, Advocate for Respondent No.1.

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CORAM : R. G. KETKAR, J.

DATE : 06th JUNE, 2018

PC.

1. Heard Mr.Vishal Kanade, learned counsel for the applicants and Ms.Sayali Bhaidkar, learned counsel for respondent No.1, at length.
2. By this application under Section 115 of Code of Civil Procedure, 1908, the applicants who are heirs of the original defendant (since deceased), hereinafter referred to as the 'defendants', have challenged the judgment and order dated 26.7.2016 passed by the learned 7th Additional Small Causes Judge, Pune below Exhibit-7 in Civil Suit No.394/2015. By that order, the learned trial Judge allowed the application filed by the respondent, hereinafter referred to as the

'plaintiff' for bringing on record the legal heirs of the original defendant since deceased.

3. In support of this application, Mr. Kanade submitted that the plaintiff had instituted suit in the year 2015 against R. Ganesh Chettiyar who had died on 26.6.2004. Thus the plaintiff had instituted suit against a dead person and such defect cannot be cured by bringing on record the present applicants. In view thereof, the plaintiff cannot continue with the suit. The learned trial Judge was, therefore, not justified in allowing the application.

4. On the other hand, Ms.Bhaidkar supported the impugned order. She has invited my attention to the decision of Apex Court in **Kuruppaswamy and others v. C. Ramamurthy, AIR 1993 SC 2324** and submitted that in the present case the plaintiff after acquiring knowledge about the death of original defendant has taken steps promptly and filed application.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The learned trial Judge has considered the decision in **Karuppaswamy** (supra) and held that the plaintiff has taken steps after considering bailiff report dated 26.11.2015 by filing application on

12.1.2016. The learned trial Judge, therefore, allowed the application.

6. In view thereof and for the reasons recorded in paragraph-8 of the impugned order, I do not find that the learned trial Judge has committed any error. Hence the Petition fails and the same is dismissed.

7. It is made clear that where a decree is appealed from by the applicants, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)