

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 63 OF 2012
WITH
CIVIL APPLICATION NO. 1455 OF 2013
WITH
CIVIL APPLICATION NO. 1588 OF 2015
WITH
CIVIL APPLICATION NO. 358 OF 2016
IN
SECOND APPEAL NO. 63 OF 2012**

Joti Khashaba Madake & Anr.

...Appellants/
Applicants

Versus

Popat Khashaba Madake & Ors.

...Respondents

.....

Mr.Dhananjayrao D. Rananaware for the Appellants/ Applicants.
Mr. Vijay Dighe for the Respondents.

.....

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **APRIL 24, 2018**

P.C.:

1. The learned Counsel for the respondents submits that today he will file Vakalatnama.
2. Registry to accept the same.

3. The learned Counsel for both the parties submit that the parties are going to settle the matter and they will file the consent terms.

4. The learned Counsel for the appellants/ applicants submits that Civil Application No. 358 of 2016 is moved for recalling the order dated 16th October, 2015 passed by this Court and restoring the Civil Application No. 1455 of 2013. There is a delay of 28 days in filing the said Application. He further submits that Civil Application No. 1455 of 2013 is moved for bringing on record the legal heirs of respondent no. 3- Shantabai Ankush Lokhande, who has expired on 8th October, 2010 and also deleting the name of respondent no. 5- Muktabai Khashaba Madake, who has expired on 31st October, 2012. He prays that the order dated 16th October, 2015 be recalled and the delay be condoned.

5. The learned Counsel for the respondents submits to the order of this Court.

6. In view of these submissions and as the parties are going to settle the matter amicably, the order dated 16th October, 2015 is hereby recalled. Civil Application No. 1455 of 2013 is restored to its

original file. Delay is condoned.

7. Civil Application No. 358 of 2016 is allowed and is accordingly disposed of.

CIVIL APPLICATION NO. 1455 OF 2013

8. The learned Counsel for the applicants submits that Civil Application No. 1455 of 2013 is moved for bringing on record the legal heirs of respondent no.3. There is a delay of 2 years and 239 days in filing the Civil Application. He prays that the legal heirs of respondent no. 3 be brought on record and delay be condoned.

9. The learned Counsel for the respondents submits to the order of this Court.

10. For the reasons mentioned in the Civil Application, the legal heirs of respondent no. 3 are to be brought on record. Delay is condoned. Amendment is to be carried out forthwith.

11. Civil Application is allowed and is accordingly disposed of.

CIVIL APPLICATION NO. 1588 OF 2015

12. The learned Counsel for the applicants submits that this Civil Application is moved for substituted service by publication to serve the legal heirs of deceased respondent no.3

13. All the legal heirs of respondent no.3 have filed their appearance and, therefore, the said Application does not survive. Hence, it is disposed. of.

At 3.00 p.m.

14. All the parties are present in the Court and the Court Sheristedar verified their identity. The learned Counsel for both the parties submit that both the parties have settled the matter amicably. They have filed the consent terms dated 24th April, 2018 (from page nos. 1 to 14) along with reference map of the suit lands. The learned counsel for both the sides and the parties have signed the consent terms. The said consent terms are taken on record and marked as **Exhibit -1**. The undertakings given in the consent terms by the parties are accepted. Decree is to be

drawn as per the terms and conditions of the consent terms. In view of the consent terms, Second Appeal is disposed of. Civil Applications are accordingly disposed of.

15. The appellants are entitled to refund of the Court Fees, if any, as per the rules.

(MRIDULA BHATKAR, J.)