

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAS) NO.1041 OF 2016
IN
SECOND APPEAL ST. NO.18994 OF 2016

Gajanan Mahadeo Bardiya and anr.

-vs-

Hanuman Narayan Bardiya and ors.

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

Court's or Judge's Orders.

Shri P. B. Patil, Advocate for appellants/applicants.
Shri G. G. Mishra, Advocate for respondent No.1.
Shri M. P. Kariya, Advocate for respondent Nos.3 to 8.
Shri P. P. Deshmukh, Advocate for respondent No.10.

CORAM : A.S.CHANDURKAR, J.

DATE : January 29, 2018

By this application it is prayed that the delay in filing the second appeal be condoned. Notice was issued on this application. It is noticed that respondent No.9 had expired on 27/03/2013 when the appeal was pending before the first appellate Court. The first appellate Court decided the appeal on 30/12/2013. As the legal heirs of respondent No.9 were not brought on record before the first appellate Court, the appeal proceeded without his legal heirs being brought on record. In the meanwhile, the respondent No.2 also expired on 26/09/2016. In the present proceedings Civil Application No.1018/2017 has been also filed for bringing on record the legal heirs of respondent No.2.as well as the legal heirs of respondent No.9.

Considering the fact that the appellate Court considered the appeal without the legal heirs of respondent No.9 being on record, its judgment has been passed against a dead person. It would therefore be necessary to remand the proceedings to the first appellate Court so as to enable the original plaintiff to bring on record the legal heirs of respondent No.9. Similarly, the plaintiff can take steps to bring on record the legal heirs of respondent No.2 also. If such applications are made by the plaintiff, the same shall be decided on their own merits and in accordance with law.

Hence the following order is passed :

- i) Judgment of the first appellate Court in R.C.A. No.28/2009 dated 30/12/2013 is set aside on the ground that it was passed against a party who had already expired.
- ii) The proceedings are remanded to the first appellate Court. The parties shall appear before the first appellate Court on 20/02/2018.
- iii) Present proceedings are disposed of in aforesaid terms.

JUDGE