

IN THE HIGH COURT OF BOMBAY AT GOA**MISC.CIVIL APPLICATION NO. 21 OF 2019
IN
SECOND APPEAL NO. 83 OF 2018****JAYWANT ODDO GAONKAR AND ANR., ... Applicants****Versus****BABURAO BALU GAONKAR (DEC) THR.
LRS. AND ANR., ... Respondents**

Adv. Sagar Dhargalkar for the Applicants.

Adv. Annelsie Fernandes for Respondent no.2 (iv, V & Vi).

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 17th January 2020.

P.C.:

In July 2001, the plaintiffs sued two defendants. But the suit was dismissed in August 2009. Aggrieved, the plaintiffs filed Regular Civil Appeal No.92/2009. The appeal, too, was dismissed in August 2010. Eventually, the plaintiffs filed this Second Appeal.

2. Pending the Second Appeal, as the appellants' counsel claims, this Court allowed the appellants to apply to the first appellate Court for the review of its judgment. Accordingly, they filed a review petition. Pending that Review Application, the first defendant/respondent died. Then, his legal representatives were brought on record. Two of them were respondent no.1(b) and 1(i). They were brought on record in July 2017.

Eventually, the review application was also dismissed. Now the appellants are to proceed with this Second Appeal.

3. But, now, the appellants have come to know that respondent no.1(b) died in May 2005 and respondent no.1(i) died in 2013. That is, both had died before they were impleaded. To bring the legal representatives of those deceased respondents if they could be called the respondents, the appellants have filed M.C.A No.21/2019.

4. The appellants' counsel informs the Court that the estate of the respondent no.1(i) already sufficiently stands represented. Therefore, no further legal representatives need be brought on the record. But the legal representatives of respondent no.1(i) ought to be brought on record, otherwise his estate remains unrepresented. So they have filed MCA No.21/2019.

5. Given the peculiar circumstances, I reckon, in the first place, the legal representatives of respondent 1(b) and 1(i) themselves must have been brought on record. For the respondent nos. 1(b) and 1(i) already died, and there was no occasion for the appellants to bring on the record dead persons. So, our calling the persons to be brought on the record as the legal representatives of the deceased respondents is a misnomer.

6. The technicalities aside, at any rate, this application is allowed, and the appellants are permitted to bring on record the legal heirs of the respondent nos.1(b) and 1(i). Amendment to be carried out in two weeks.

Place the matter on 07.02.2020.

DAMA SESHADRI NAIDU, J.

ap/-