

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****CIVIL APPLICATION NO. 2064 OF 2017****IN****FIRST APPEAL NO. 1338 OF 2011****ALONGWITH****FIRST APPEAL NO. 1338 OF 2011****Sharad Vishnu Kadam****..... Applicant****IN THE MATTER BETWEEN****Prakash B. Mehta****..... Appellant****VERSUS****Vishnu M. Kadam****..... Respondent**

Mr.J.G.Damani for the Applicant/Original Respondent.

Mr.Amogh Singh, i/b. Mr.D.R.Shah for the Appellant.

CORAM : R.D. DHANUKA, J.**DATE : 3rd MARCH, 2020****P.C.**

First Appeal not on board. Taken on board.

2. This matter was on board on 25th February, 2020 when Mr.Damani, learned counsel for the respondent produced a death certificate issued on 25th February,2015 of Mr.Prakash Bhawarlal Jain having expired on 6th December, 2014. He submitted before this court that the legal heirs of the original appellant are not impleaded in the First Appeal in place of the original appellant and also for setting aside the abatement. The matter is placed on board. Mr.Singh, learned counsel for the appellant on the other hand states that the name of the person on the death certificate produced by the respondent is different

than the name of the appellant shown in the cause title. He submits that the address of the said person Mr.Prakash Bhawarlal Jain is also different than the address shown in the First Appeal.

3. Mr.Damani, learned counsel for the respondent invited my attention to the page (39) of the appeal paper book and would submit that the appellant had admitted in his cross examination that he had changed his surname from Mehta to Jain on 26th July, 2007, when his name was published in the Official Gazette of the Government of Maharashtra. He submits that Mr.Prakash Bhawarlal Jain and Mr.Prakash Bhawarlal Mehta are one and the same person.

4. Mr.Singh, learned counsel for the appellant however states that he could not verify the correctness of the statement made by the learned counsel for the respondent since on the address mentioned in the cause title of the appeal memo and in the death certificate of his client was not found. He is thus not in a position to make any statement whether the appellant has expired or not. In view of the statement made by Mr.Damani, learned counsel for the respondent, First Appeal stands abated.

5. If any application is made by the legal heirs of the appellant in future for setting aside the abatement and for impleadment of their names on record, the same would be considered on its own merits. In view of the aforesaid order, the original claimants are permitted to execute the decree subject to the aforesaid directions. Pending civil application, if any, also stands disposed of. No order as to costs.

[R.D.DHANUKA, J.]