

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.3668 OF 2021
IN SA/454/2004

SAHEBRAO @ SUKHADEO MADHAV SHINDE
VERSUS
PATILBA KISAN BHOSALE (DECEASED) THROUGH LRS. DEVIDAS S/O
PATILBA BHOSALE AND OTHERS

...
Mr. V. S. Bedre, Advocate for applicant.
Mr. P. B. Shirsath, Advocate for Respondent Nos.1A to 1E and 2A to 2D.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 22.11.2021

ORDER :-

. Present civil application has been filed for getting the delay of 2551 days condoned in bringing the legal representatives of respondent No.1 and delay of 3765 days condoned in bringing the legal representatives of respondent No.2 on record. The present applicant is the original defendant No.1/appellant in the second appeal. He is challenging the concurrent judgment and decree passed by the Courts below.

2. In the application, it is contended that respondent No.1 – original plaintiff No.1 expired on 08.12.2012 and respondent No.2/plaintiff No.2 expired on 12.08.2009. According to the applicant, he was not aware

about the death of both the respondents that respondent Nos.1 and 2. In fact, Advocate for the applicant came to know about the death of respondent Nos.1 and 2 through the Advocate then representing respondents. Thereafter, after collecting all the necessary information and certificates, the application has been filed. The delay is absolutely not intentional. Applicant is a poor agriculturist and had no knowledge about the legal procedure. Legal representatives are required to be brought on record and, therefore, the delay be condoned. Affidavit-in-reply has been filed by the proposed respondents - legal representatives of respondent Nos.1 and 2 stating that the applicant has not disclosed true facts and the material facts are suppressed. Advocate representing respondent Nos.1 and 2 had given notice/pursis to the Registrar as well as to the Advocate for the applicant on 28.02.2020 together with copies of death certificates of respondent Nos.1 and 2. By separate notice, details of all the legal representatives of respondent Nos.1 and 2 i.e. their full names, age, occupation and address were also given on the same date. However, no steps were taken by the applicant to file the application on record. Steps were not taken for about a year. The delay has not been properly explained. Further, already the order of abatement of the second appeal as against respondent Nos.5, 7, 9 and 10 is already passed and the second appeal is already dismissed against

respondent No.4 for not taking steps. Under such circumstance, the second appeal deserves to be dismissed.

3. Heard learned Advocate Mr. V. S. Bedre for the applicant and learned Advocate Mr. P. B. Shirsath for respondent Nos.1-A to 1-E and 2-A to 2-D. In order to cut short, it can be said that both of them have made submissions in support of their respective contentions.

4. At the outset, it is to be noted that the legal representatives of respondent Nos.1 and 2 appear to be under some mistaken facts, as the application appears to have been filed on 01.03.2020 itself, when they had allegedly given the information on 28.02.2020. However, the fact remains is that, definitely, there is delay as original plaintiff No.2 had expired on 12.08.2009 and plaintiff No.1 had expired on 08.12.2012. Explanation can be given by the applicant that since he was resident of Jadhavwadi, Taluka and District Ahmednagar and the original plaintiff Nos.1 and 2 were stated to be resident of Khadki, Taluka and District Ahmednagar, he was not aware about the death of those persons. Under such circumstance, though the present application is restricted to bringing legal representatives of respondent Nos.1 and 2 only, yet we cannot forget a fact that the second appeal has already abated as against respondent Nos.5, 7, 9 and 10 by order passed by the

learned Registrar (Judicial) on 24.03.2010. No steps have been taken to bring their legal representatives on record.

5. Regular Civil Suit no.677 of 1984 was filed by present respondent Nos.1 and 2 i.e. original plaintiffs before learned Joint Civil Judge Junior Division, Ahmednagar for declaration and injunction. Present applicant/appellant is the original defendant No.1. The learned Trial Judge had decreed the suit. It was then declared that the transactions entered into by original defendant No.4 in favour of defendant Nos.1 to 3 are illegal and not binding on the plaintiffs and defendant Nos. 5 to 10 and their legal representatives. Further, declaration was also given, but it was in respect of original defendant No.4 and the consequential order of perpetual injunction was also passed. Only present applicant - defendant No.1 filed Regular Civil Appeal No.264 of 1996 and it was dismissed by the learned 4th Adhoc Additional District Judge, Ahmednagar on 04.12.2001. This Court admitted the second appeal by framing substantial questions of law on 05.06.2008 and thereafter, when notices were issued and the reports have come, learned Registrar (Judicial) had passed the order on 24.03.2010 regarding abatement of the appeal as against respondent Nos.5, 7, 9 and 10. No steps were taken in respect of unserved respondent No.4 and, therefore, the second appeal stood dismissed as against him. Thereafter, till the present application was

filed on 01.03.2020 i.e. for about 10 years, no attempts have been made by the applicant to bring the legal representatives of those respondents on record and to get the appeal restored as against respondent No.4. It is to be noted that respondent Nos.5, 7, 9 and 10 were the original defendant Nos.4, 6, 8 and 9 in whose favour, the decree was passed that the sell transaction executed by defendant No.4 in favour of present applicant and defendant Nos.2 and 3 is not binding on them. Therefore, the decree that was passed was joint and several. Without bringing the legal representatives of these respondents, the second appeal cannot proceed and if proceeded, possibility of contrary judgment cannot be ruled out and, therefore, in view of the decisions in ***State of Punjab Vs. Nathu Ram, [AIR 1962 SC 89]*** and ***Bibijan and others Vs. Murlidhar and others, [(1995) 1 SCC 187]***, the appeal abates as a whole. Under such circumstance, though for some practical reasons, as the intimation under Order 22 Rule 10-A of the Code of Civil Procedure was given by the Advocate for respondent Nos.1 and 2 only on 28.02.2020 and immediately within 3 days the application was filed for bringing the legal heirs on record, but there was already delay of 2551 and 3765 days, the application can be considered as within limitation. But, for the reasons stated above, the appeal in its entirety stands abated in view of the decree that was passed by the learned Trial Judge and, therefore,

second appeal stands disposed of as abated as a whole.

6. Civil application stands disposed of accordingly.

[SMT. VIBHA KANKANWADI, J.]

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