

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 CIVIL APPLICATION NO.965 OF 2021
IN SA/423/2012 WITH CA/1116/2012 IN SA/423/2012

DAMODHAR NIVRUTTI SHINGARE AND ANOTHER
VERSUS

BALU ONKAR ZODGE AND OTHERS

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Mr. B.S. Kudale, Advocate for applicant

Mr. P.D. Suryawanshi, Advocate for respondent No.1, 2 and 4

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 11th FEBRUARY, 2021.

PER COURT :

1 Present application has been filed to bring the legal representatives of respondent No.15 on record, who expired on 09.09.2020. Though the appellants/applicants contend that there is some delay, yet, taking into consideration that the death has occurred in pandemic, the Civil Application is within limitation. The appellants were not even the party to the suit, however, it appears that after the suit was decided they had filed an application and sought leave to appeal. Regular Civil Suit No.198/1986 was filed by present respondent Nos.1 to 7 for partition and separate possession. It came to be partly decreed on 03.05.2001. As aforesaid, the present

appellants had filed Regular Civil Appeal No.177/2004 before District Judge-1, Majalgaon, Dist. Beed by taking leave to appeal and the said appeal came to be dismissed on 17.11.2011. Therefore, they filed Second Appeal No.423 of 2012, challenging the said Judgment and Decree, passed by the First Appellate Court. The said appeal came to be admitted in this Court on 30.07.2012. Under such circumstance, definitely the right to sue survives, and therefore, it is necessary to bring the legal representatives of respondent No.15 on record. When the application is within limitation, it is not necessary to issue prior notice to the proposed legal representatives.

2 The application stands allowed.

3 The consequential amendment be carried out within a period of one week.

4 After the amendment is carried out, issue notice to the added respondents, made returnable after six weeks thereafter.

(Smt. Vibha Kankanwadi, J.)

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