

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

941 SECOND APPEAL NO.550 OF 2013

RAJANNA RAJANA (BK) KASLOD
VERSUS
RAJANNA RAJANA (KD) KASLOD AND OTHERS

...
Advocate for Appellant : Mr. Bilolikar Upendra B.
Mr. Bhavthankar Vivek Vasantrao, Adv. For R/2

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 7th September, 2021.

PER COURT :-

1. Learned Advocate for the appellant submits that he has instructions to say that the appellant has expired and he also submits that the appellant is survived by a widow, who does not want to approach this Court.
2. Another hurdle in this case as regards proceeding with the matter is concerned, the appeal came to be abated against Respondent No.1 and order to that effect has been passed by this Court on 19.12.2013. There was no attempt to get that order set aside and bring legal representatives of deceased Respondent No.1 on record.
3. The suit was for partition and separate possession and it was decreed. However, original deft.No.2 filed the appeal. The appeal came to be allowed and the judgment and decree passed by the Trial court has been set

(2)

aside. Now, this Court cannot reverse that decree in absence of the legal heirs of Respondent No.1. Therefore, in view of the decisions in the case of State of Punjab Vs. Nathuram – AIR 1962 SC 89, and Bibijan and Ors. Vs. Murlidhar and Ors. - (1995) 1 SCC 187, the entire appeal shall fail.

4. The Second Appeal stands disposed of. Pending civil application, if any, also stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV