

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

3 CIVIL APPLICATION NO.10891 OF 2021
IN SA/1656/2005
WITH
CA/8150/2004 IN SA/1656/2005

PRATAPRAO NARSINGRAO DESHMUKH

VERSUS

RAMBHAU GENBA KAVADE DIED THROUGH LRS. SHANTABAI RAJESAHEB
GORE and ORS.

...

Mr. R.T. Deshmukh, Advocate for the applicant

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 25th OCTOBER, 2021

PER COURT :

1 Present application has been filed for disposing of the Second Appeal No.1656 of 2005 as abated in its entirety. The present applicant is the respondent No.1A in the Second Appeal. It was pointed out on 11.10.2021 that the respondent Nos.1 and 2 in this application, who are the original appellants in the Second Appeal, have expired on 06.09.2019 and on 24.11.2016 respectively. However, their legal representatives have not been brought on record. Time was given till today to take appropriate steps,

however, those steps have not been taken. The appeal was admitted on 04.12.2008 by framing substantial questions of law. When, in fact, the appellants themselves have expired and in fact, they were only two appellants, in other words, both the appellants, who filed the Second Appeal, have expired and their legal representatives are not coming forward, then definitely, it has to be considered, as to whether the appeal abates as a whole. At the outset, it is to be noted that the appellant No.2 had, in fact, expired on 24.11.2016 itself and at that time the appellant No.1 is stated to have been alive, in view of the fact that his death certificate shows that he expired on 06.09.2019. For three years there was no attempt by the first appellant to bring the legal representatives of the appellant No.2 on record and thereafter, after death of the appellant No.1 on 06.09.2019 there is no step to bring his legal representatives on record. Both the appellants were original defendant Nos.6 and 7. Present original respondent No.1A to the appeal and respondent No.2 were the original plaintiffs, who had filed suit for preferential right to purchase 1/3rd share of defendant Nos.2 to 4. Original defendant No.6 i.e. present appellant No.1 was the purchaser and original defendant No.7 i.e. present appellant No.2 had not even filed the written statement. The suit was decreed. The sale deed dated 05.06.1982 was declared as null and void. Present appellant-original defendant No.6, appellant No.2-original defendant No.7 and one Devidas, who is now

respondent No.7 in the Second Appeal – original defendant No.5, together had filed Regular Civil Appeal No.89/1997, which was dismissed by learned 4th Adhoc Additional District Judge, Osmanabad on 21.11.2003. Under such circumstance, when the decree that was passed by the learned Trial Judge i.e. Joint Civil Judge Junior Division, Bhoom, Dist. Osmanabad in Regular Civil Suit No.57/1982 on 07.04.1997 was joint and several and in absence of any of the parties, the Second Appeal cannot proceed. Now, as aforesaid, both the appellants have expired and no steps have been taken within the period of time available to bring their legal representatives on record and, therefore, in view of **State of Punjab vs. Nathu Ram [AIR 1962 SC 89]**, **Bibijan and others vs. Murlidhar and others [1995 (1) SCC 187]**, **Annabai Devram Kini and others vs. Mithilal Daisangar and others [2002 (3) Mh.L.J. 507]** and **Gajanan Namdev Kale vs. Sakhubai Bhimaji Kharat (died) through LRs and others [2012 (4) Mh.L.J. 470]**, the appeal will not survive. It stands disposed of in its entirety. Interim relief, if any, stands vacated.

(Smt. Vibha Kankanwadi, J.)