

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

**9 CIVIL APPLICATION NO.5337 OF 2018
IN RA/62/2016**

SHRAWAN KERU MISAL (DECEASED) THR.LRS. SHANKAR
(DECEASED) THR.LRS. RATNAMALA AND OTHERS
VERSUS
VITHAL EKNATH KULKARNI (DECEASED) THR.LRS. KAMAL
(DECEASED) AND OTHERS

...
Advocate for Applicants : Mr.Rahul A.Tambe
Advocate for Respondent Nos.2A to 2H, 3, 4B-1 :
Mr.R.B. Deshpande

...
CORAM : M.G.SEWLIKAR, J.

DATE: 1st April, 2021

PER COURT:-

1. Heard.
2. This application is filed for bringing legal heirs of respondent No.2 on record.
3. Mr.R.A.Tambe, learned counsel for the applicants submits that the applicants got the knowledge of the death of respondent No.2 only when notices were returned unserved on account of death of respondent No.2. Thereafter, he immediately filed application for bringing legal heirs on record.

4. Mr.R.B.Deshpande, learned counsel for respondent Nos.2A to 2H, 3 and 4B-1 submits that the applicants have lost in the District Court and in Second Appeal also. Now, they have filed application for review. The applicants are in possession of the property and therefore, by one or other way the applicants are trying to protract the litigation. Therefore, the applicants are filing applications after applications just to deny the fruits of decree to respondents. He submits that the respondents had intimated the Court about the death of respondent No.2.

Mr.Tambe, learned counsel for the applicants submits that soon thereafter, he filed application for bringing legal heirs on record.

5. The record shows that the applicants came to know about death of respondent No.2 only after bailiff submitted the report.

6. Mr.Tambe, learned counsel for the applicants states that on 22-02-2018 notice of respondent No.2 was returned unserved. Applicants obtained death certificate of respondent No.2 and in the month of April 2018 he filed application for bringing legal heirs on record.

7. Mr.Deshpande, learned counsel for respondent Nos.2A to

2H, 3 and 4B-1 submits that the notice of respondent No.3 was returned unserved on 04-05-2016.

8. The submission of Mr.R.B.Deshpande, learned counsel for respondent Nos.2A to 2H, 3 and 4B-1 cannot be accepted because the notice, which was returned unserved was of respondent No.2 and not of respondent No.3. In this view of the matter, the applicants have explained the delay in bringing the legal heirs on record. It appears that the delay was neither intentional nor deliberate.

9. In view of above, the application for bringing the legal heirs of respondent No.2 on record is allowed. Abatement is set aside. Leave to amend is granted. The applicants to carry out amendment within two weeks.

(M.G.SEWLIKAR)
JUDGE

SPT