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

902 CIVIL APPLICATION NO.15050 OF 2018
IN SA/265/2011

SHANTABAI KASHINATH MEDHE (DIED), AND ANOTHER
VERSUS
ASHOK MAHIPATI WAYAKINDE AND ANOTHER

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Mr S. S. Wagh, Advocate for applicants;
Mr V. B. Jadhav, Advocate h/f Mr A. V. Hon, Advocate for
respondent No.1

WITH CA/7898/2021 IN SA/265/2011

ASHOK MAHIPATI WAYKINDE
VERSUS
SHANTABAI KASHINATH MADHE (DIED) & OTHERS

Mr V. B. Jadhav, Advocate h/f Mr A. V. Hon, Advocate for applicant;
Mr S. S. Wagh, Advocate for respondent Nos.1 & 2

CORAM : RAVINDRA V. GHUGE, J

DATE : 26th November, 2021

PER COURT:

1. Heard the learned Advocates for the respective sides.
2. Second Appeal No.265/2011 was dismissed in default by order dated 10/12/2014. Within limitation, the appellant preferred Civil Application No.5263/2015, on 08/01/2015. The said application was allowed on 27/03/2018 as it was filed within limitation. This order is sought to be recalled in the present civil application.

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3. The ground raised by the present applicants is that respondent No.2 – Vatsalabai Khanderao Jadhav passed away on 11/09/2016. The appellant - Ashok Mahipati Waykhinde preferred Heirship Certificate proceeding in relation to deceased Vatsalabai. He should have amended Civil Application No.5263/2015 as there are 9 legal representatives (not survivors) of deceased Vatsalabai. The said civil application has been allowed and the second appeal has been restored as against a dead person. The learned Advocate Shri. Wagh submits that Vatsalabai died issue-less, but has created ten legal representatives by a will, the list of which is tendered to the learned Advocate Shri. Jadhav.

4. In view of the above, having considered the submissions of the advocates, this civil application is allowed. The order of this Court dated 27/03/2018 in Civil Application No.5263/2015, is recalled and the said civil application is restored to the file of this Court.

5. Since Shri. Wagh, the learned Advocate for the applicants is tendering a list of legal representatives of deceased Vatsalabai, to the appellants, the said appellant Ashok Waykhinde shall bring the legal representatives on record in Civil Application No.5263/2015, on or before 10/12/2021.

6. As such, office shall issue notice to the legal representatives, returnable on 14/01/2022. Shri. Wagh, the learned Advocate would

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waive service on behalf of Nitin Popatrao Solke.

7. Civil Application No.7898/2021 be listed along with the restored Civil Application No.5263/2015, on 14/01/2022.

(RAVINDRA V. GHUGE, J.)

sjk