

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

930 CIVIL APPLICATION NO.9077/2021
IN
SECOND APPEAL NO.249 OF 1997
WITH CA/2859/1997 IN SA/249/1997

GANESH SHIVNATH MANDE & ORS.
VERSUS
JAGANNATH DHONDIBA MANDE

...

Advocate for Appellants : Shri Patil Milind;
Shri D R Irale Patil, Adv. For Resp.Nos.4 & 6.;
Resp.Nos. 2, 3 and 5 are served;
Mr. Ashutosh S.Kulkarni, Adv. h/for Mr. Deshmukh Vijay
Vasantrao & Mr. S.K.Rahane, Adv.For Resp Nos. 7 & 8;

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 1st September, 2021.

PER COURT :-

1. Present application has been filed to bring the fact on record that original plaintiffs, i.e. present appellants have become major by passage of time and they are no longer required to be represented by the next friend. Further, their mother, who was their next friend, was not made party in her independent capacity. But then now she would be added as an appellant in her independent capacity. So also the fact of death of grand-mother of the plaintiffs viz. Yashodabai Wd/o Jagannath Mande, who expired during pendency of the appeal on 16.12.2016 and, therefore, no necessity to bring her on record. Her interest is represented by the parties to the litigation.

2. Learned Advocate Mr.Kulkarni representing for Respondent Nos.7 and 8, submits that since the fact about attaining majority of the plaintiffs cannot be denied and also the fact of death cannot be challenged, he has no serious objection. However, he pointed out that the first Appellate Court was required to interfere with the decree that was passed by the learned Trial Court only on the ground that necessary parties were not included. They were grand-mother Yashodabai and mother of the plaintiffs in her independent capacity. This could have been done much much earlier in this appeal itself and this Court, while admitting the Second Appeal, had formulated only one substantial question of law which was relating to the necessary party.

3. At the time when the suit was filed, the plaintiffs were aged 7, 4, 11 and 9 respectively. The suit was filed on 14.6.1991 and it was decided on 30th November, 1994. Regular Civil Appeal No.20/1995 was filed in the year 1995 and it was decided in 1997. In Second Appeal filed in the year 1997, though appellant No.1 was shown as aged 19; yet it is stated that he is through his guardian mother. Age of appellant Nos. 2, 3 and 4 has been shown as 10, 7 ½ and 15 respectively.

4. It appears that calculation of age at the time of filing of the Second Appeal was wrong. So also, it appears that office

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of this Court has not raised any office objection in respect of the same. In any way, now, age of the original plaintiffs 1 to 4 is 37, 34, 41 and 39 respectively. Immediately after all had attained the majority, there was no change in the title. This could have been avoided or such situation could not have been waited. It requires diligence on the part of the parties as well as Advocate, who is drafting. From the present age of the applicants, it can be definitely considered that the change, which they want to bring on record today, could have been brought years ago.

5. Secondly, as regards the fact of death of Yashodabai is concerned, immediately after pronouncement of the judgment of the first Appellate Court and filing of the Second Appeal, the said step could have been taken to add her party and then the matter could have proceeded with and even at that time itself, instead of framing substantial question of law, the matter could have been disposed of at the admission stage itself.

6. The present appeal came to be admitted on 29th September, 2000 and the present application has been filed after 21 years. Respondent Nos.7 and 8 are the main contesting parties and, therefore, inconvenience that would be caused to Respondent Nos.7 and 8, deserves to be compensated. Hence, following order, -

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ORDER

i. The application stands allowed and disposed of.

ii. The fact of attainment of majority of the original plaintiffs is taken on record. Their mother, who was up till now shown as guardian, be taken on record in her independent capacity. So also the fact of death of grand-mother Yashodabai Jagannath Mande is taken and the pursis to that effect filed on record is taken on record.

iii. The title of the Second Appeal be amended accordingly.

iv. The applicants to deposit costs of Rs. 50,000/- within a period of one month from today. After deposit of the amount of costs, it be distributed equally to Respondent Nos. 7 and 8.

v. S.O. to 4.10.2021.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV