

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO.1083 OF 2019
IN
SA/376/2009**

DAMODHAR S/O NILCHAND SHAHANE THR.LRS.
AND ANOTHER
VERSUS
SMT.JANKIBAI W/O BABAN SONAR (SHAHANE) THR.LRS.
AND OTHERS

.....
Advocate for Applicants : Mr. L. V. Sangeet
AGP for Respondents No.2 and 3 : Mr. B. V. Virdhe
Advocate for Respondent No.1-G-ii : Mr. M. M. Bhokariker
Advocate for Respondents : Mr. A. S. Kulkarni
....

CORAM : SMT.VIBHA KANKANWADI, J.

**DATE OF RESERVING THE ORDER :
20-08-2021.**

**DATE OF PRONOUNCING THE ORDER :
21-09-2021.**

ORDER :

1. Present application has been filed by the appellants in the second appeal to bring the legal representatives of deceased respondent No.1-B-5 Pandharinath s/o Neelachand Shahane.
2. Said Pandharinath expired on 01-06-2018. The application was filed within limitation. It was contended that the right to sue survives as against two more persons. In fact, by earlier Civil Application

No.14324 of 2018 the legal heirs at Serial No.i to iii were brought on record, however, now the applicant came to know about two more heirs those were left by Pandharinath and, therefore, by this application appellants want to be them add to the appeal.

3. Heard learned Advocate Advocate Mr. L. V. Sangit for applicants and learned Advocates Mr. A. S. Kulkarni, Mr. M. M. Bhokarika for respondents and Mr. B. V. Virdhe for respondent-State.

4. Learned Advocate Mr. Bhokarika who is representing the respondent No.1-G-ii strongly opposed the application and submitted that the original plaintiff/present respondent No.1 late Jankibai Baban Sonar has left Will in favour of Gajendra who was the power of attorney of late Jankibai. The Will has been scribed on 24-09-2013 and, thereafter, she died on 15-10-2013. Therefore, when the interest of the plaintiff is properly represented, it is not necessary that there should be addition of any party. He has filed the affidavit-in-reply of said Gajendra and has relied upon so many authorities and it appears that those authorities are mainly on the basis that the matter would be taken up for final hearing since the second appeal is already admitted. Further, it was also contended

that by Civil Application No.33 of 2016 he had made the application to bring him on record and by order dated 12-07-2019 this Court had directed that the said appeal can be considered along with the appeal itself. It will not be out of place to mention here that Civil Application No.330 of 2016 was then resisted by respondents No.1 and 2 who had filed the affidavit-in-reply. Affidavit of respondent No.1-G-i was filed on record thereby disputing the alleged Will left in favour of the applicant in Civil Application No.330 of 2016.

5. As it stands, deceased Jankibai Baban Sonar (Shahane) had filed Special Civil Suit No.108 of 2001 for declaration and possession before Civil Judge Senior Division, Jalgaon. The said suit was decreed on 30-04-2003. Then original defendants No.1 and 2 filed Regular Civil Appeal No.145 of 2003 challenging the said decree passed by the learned Trial Judge. It was dismissed by learned District Judge-2, Jalgaon on 01-04-2009. Hence, this second appeal. The second appeal was admitted on 22-06-2009 by framing substantial questions of law. With the passage of time in the second appeal, original plaintiff Jankibai expired and her legal heirs were brought on record vide Civil Application No.303 of 2014 by the amendment with the leave of Registrar's order dated 22-01-2014.

Deceased Pandharinath was taken as respondent No.1-B-5 and Gajendra Kashinath Shahane has been brought on record as respondent No.1-G-ii. As aforesaid, he filed Civil Application No.330 of 2016 for recalling and quashing as well as setting aside order passed by Registrar on 22-01-2014 and then he prayed that his name only be entered as legal representative of late Jankibai on the basis of Will left by her. It appears that on 12-07-2019 this Court, even after objection raised on behalf of the appellants as well as other respondents, kept the application for hearing together with appeal. Now said Pandharinath has expired and his wife and other four sons have been brought on record in view of the order passed by this Court in Civil Application No.14324 of 2018 dated 30-11-2018. By this Application i.e. 1083 of 2019 it is contended that there are two more names of the sons remained to be added as heirs of deceased Pandharinath.

6. Without going into further aspects it is to be noted that the order passed by this Court on 30-11-2018 has not been set aside nor there is any application filed to set it aside. Under such circumstances, when some of the legal representatives of Pandharinath have already been directed to be brought on record

and two legal heirs have been left out, whose names were not pointed out even by the other party to the litigation, there is no hurdle in allowing them to be added as party to the appeal. Hence, the application No.1083 of 2019 deserves to be allowed, accordingly it is allowed and disposed of.

7. The legal representatives as prayed be brought on record on or before 04-10-2021.

8. Question still arises as to whether Civil Application No.330 of 2016 can be kept pending and can be heard along with the second appeal. When there is specific provision when the dispute regarding legal representatives comes, the said provision is under Order 22 Rule 5 of the Code of Civil Procedure and, therefore, all the concerned Advocates to address this Court as to whether the order passed in Civil Application No.330 of 2016 on 12-07-2019 deserves to be recalled and the course required to be adopted under Order 22 Rule 5 of the Code of Civil Procedure should be taken. Place the matter on 18-10-2021.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA
J

Digitally signed
by GAWADE
VIRENDRA J
Date: 2021.09.21
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