

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application [CAS] No.161 of 2021
in
Second Appeal No.530 of 2005

Rajendra Deshraj Bagga & another
vs.
Bimalkumar Babulal Gupta, through L.Rs. & others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri D.R. Khapre, Advocate for the Applicants-Appellants.
Shri R.M. Pande, Advocate for Respondent Nos.1(a) to 1(d).
Shri Rohit Joshi, Advocate for Respondent Nos.2, 4 & 5.

CORAM : S.M. MODAK, J.
DATE : 3rd AUGUST, 2021.

Heard the learned Advocates appearing for the parties.

Respondent No.2 expired on 02/02/2013. The matter had come up for final hearing on 03/02/2020. During enquiry with the appellants, the appellants informed the learned Advocate about the death of respondent No.2. The fact of death is not disputed on behalf of the contesting respondents. Their emphasis is only on the delay in filing the application.

According to the appellants, respondent No.2 is not survived by any Class-I legal heir. Hence, they want to delete his name.

The name of respondent No.2 be deleted and necessary amendment be carried out. The application is disposed of accordingly.

Civil Application Nos.158, 159 & 160 of 2021:

Heard the learned Advocates appearing for the parties.

Respondent No.4 expired on 03/10/2014. This was not informed to the Court on his behalf. It was told to the learned Advocate by the appellants when the matter had come up for final hearing. He has submitted that appellant No.1 is also suffering from Cancer. Necessary documents are attached.

The prayer is opposed on behalf of the contesting respondents for the reason that the date of knowledge of death is not pleaded and even though the appellant No.1 may be sick, appellant No.2 was very much there to take steps. Earlier learned Advocate Shri Rohit Joshi was representing respondent No.4. The information about his death was not admittedly given to the Court. On this background, the steps can be taken only when there is a knowledge about the death of respondent No.4. It is but natural that the appellants may not contact their learned Advocate unless it is required. The matter had come up for final hearing on 03/02/2020. It is but natural to pass on the information only when there is interaction with the learned Advocate. Whether appellant No.2 was fit or not, is immaterial. So, all the applications need to be allowed. Hence, the order :

ORDER

- (i) The delay caused in filing the application for setting aside abatement is condoned.

- (ii) The order of abating the appeal against respondent No.4 is set aside.
- (iii) The name of respondent No.4 be deleted and his legal representatives be brought on record by way of amendment.
- (iv) The delay caused in filing the application for bringing the legal representatives on record is condoned.
- (v) Learned Counsel Shri Rohit Joshi waives notice on behalf of the legal representatives of respondent No.4.
- (vi) All the applications are allowed and disposed of accordingly.
- (vii) The matter be kept on 30th August, 2021 for final hearing.

JUDGE

**sandesh*