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

Civil Application (CAS) No.477/2021
IN
Second Appeal No.276/2008

Kailash Vitthal Chavan & Anr. **Vs.** Smt. Anjanabai Narayanrao Thorat & Ors.

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

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Ms. Sonali Khobragade, Advocate for the Applicant-Appellant No.2.
Ms. Archana Narad, Advocate for Appellant No.1.
Shri S.D. Chande, Advocate for Respondent Nos.1, 2 & 29.
Shri R.D. Dhande, Advocate for Respondent Nos.6, 30 & 32.
Shri Ramesh Chavan, Respondent No.23 in Person.
Ms. Sonali Saware, Advocate for Respondent Nos.29 & 31.
Shri N.D. Dawda, Advocate h/f Shri A.M. Jaltare for Respondent Nos.33 & 34.
Shri A.M. Kukday, Advocate for Respondent Nos.36 to 38.

CORAM : S.M. MODAK, J.
DATE : 11th AUGUST, 2021.

As it is informed to the Court that respondent No.29-Keshav Chavan expired on 12th June, 1998 and respondent No.30 Kundlik Chavan expired on 15th February, 2012, present application is moved. The reasons mentioned in the application are convincing.

Hence, the name of respondent Nos.29 and 30 be deleted and the names of their legal representatives be brought on record.

The civil Application is disposed of.

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The legal representatives of appellant No.2 are already brought on record. I have seen the Pursis dated 1st August, 2021. It was filed before the Lok Adalat on 1st August, 2021. As appellant No.2 was dead and his legal representatives were not brought on record, panel members of Lok Adalat has put up this matter before the regular Court.

Appellant No.1 Kailash Chavan is present. His learned Advocate Ms. Archana Narad is present. Deepak Chavan is one of the legal representatives of appellant No.2. He has signed the pursis. It is submitted that appellant Nos.2(b) to 2(h) have authorised appellant No.2(a)-Deepak Chavan to withdraw the appeal on their behalf by giving a power of attorney dated 3rd August, 2021. Its copy be taken on record and marked as Annexure 'X'.

Vide Pursis Stamp No.20/2021 it has been informed that one dispute is going on in between the legal heirs and purchaser of the property before the trial Court. So also, it is submitted by learned Advocate that respondent Nos.3, 4, 5, 9, 15, 16 and 21 have expired and he wants to give the details of their legal representatives. It is also submitted that if the legal representatives are brought on record, there will not be any difficulty in the execution. It is submitted on behalf of the appellants that if the appellants want to withdraw the appeal, it cannot be delayed. In support of that submission, the judgments in cases of *Shiv Prasad Vs. Durga Prasad & Another* reported in *(1975) 1 SCC 405* and *Anil Dinmani Shankar Joshi and Another Vs. Chief Officer, Panvel Municipal Council, Panvel and Another* reported in *AIR 2003 BOMBAY 238* are relied upon.

The present appellants were defendant Nos.19 and 21 before the trial Court and the suit filed by plaintiff Nos.1 and 2 for partition was dismissed. Whereas the first Appellate Court decreed the suit and declared the shares of the parties. For withdrawal of this appeal, the respondent Nos.1 and 2/original plaintiffs are not objecting. Respondent No.2-Kamalabai and one of the legal representatives of deceased respondent No.1-Anjanabai by name Gajanan Thorat have signed on the pursis. It is submitted by learned Advocate Ms. Saware that she has not brought on record the legal

representatives of respondent No.1-Anjanabai.

On this background if the operative order of the first Appellate Court is perused, we find that these appellants were declared 1/10th share along with other defendants and they have challenged for declaration of share of plaintiffs/respondent No.1 and 2 to the extent of 1/10th only. So if the appellants do not want to prosecute the appeal, that is their own choice. I think the ratio laid down in the above referred cases is applicable to the facts of this case. Even if the legal representatives of some of the deceased respondents were not brought on record, it can be said that those legal representatives are at liberty to bring their names on record at appropriate proceedings. I do not think that passing an order on withdrawal pursis needs to be delayed any more. I verified from the appellant No.1-Kailash and appellant No.2(a)-Deepak Chavan. Hence, the following order is passed:-

O R D E R

1. The appeal is disposed of as withdrawn.

2. The parties to bear their own costs.

3. The parties are at liberty to agitate their grievances before the Courts who are seized of the matter.

4. It is made clear that this Court has not made any comment of merits of any dispute between the parties.

JUDGE

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