

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

CIVIL APPLICATION (CAS) 1004 OF 2010
WITH
CIVIL APPLICATION (CAS) 1005 OF 2010
WITH
CIVIL APPLICATION (CAS) 1006 OF 2010
WITH
CIVIL APPLICATION (CAS) 1048 OF 2018
IN
SECOND APPEAL NO. 72 OF 2010

Sarjerao Bajirao Raut

Vs.

Keshaorao S/o Bajirao Raut (dead) through L.R's Sau Vimal W/o Janrao Chopade & ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri V.G. Bhamburkar, Adv for the appellant.

Shri M.R. Joharapurkar, Adv for the respondent Nos.7, 8 & 9-a.

CORAM : S.M. MODAK, J.

DATE : 21st AUGUST, 2021.

1. As directed on the last date, today I have heard the arguments of learned Advocate Shri Bhamburkar for respondent No.3-d/proposed appellant and learned Advocate Shri M.R. Joharapurkar for respondent Nos.7, 8 and 9-a.

2. Civil Application (CAS) No. 1004/2010 is an application for condonation of delay of 21 days for bringing legal representatives of deceased/appellant.

Whereas Civil Application (CAS) No. 1005/2010 is for grant of permission to bring his legal representatives on record. Whereas Civil Application (CAS) No.1006/2010 is for

transposition respondent No.3-d as appellant on the basis of Will-Deed executed by the deceased/appellant. Whereas Civil Application (CAS) No.1048/2018 is for transposition not as a legatee but as a legal representative being a nephew.

Whereas Civil Application no. 1006/2010 was already argued and the issue about execution of a Will was decided by the trial Court and certified by the First Appellate Court. This Court as per the order dated 29.06.2018 was pleased to confirm the findings on the point of Will. The proposed appellant could not prove the Will. This Court as per the said order granted liberty to the proposed appellant to take appropriate steps as permissible.

3. It seems that Civil Application (CAS) No.1006/2010 remained to be disposed of. It means that Civil Application (CAS) No.1048/2018 was filed in pursuance to the liberty granted on 29.06.2018. During the argument, learned Advocate Shri M.R. Joharapurkar vehemently argued about maintainability of that application in the light of the provisions of Order XXIII Rule 1-A of the Code of Civil Procedure, 1908. According to him there is neither withdrawal nor abandonment. He also relied the Judgment in the case of *Maooli Land Developers and others In the matter between Kashibai Waman Patil and others Vs. Taukir Ahmed Mohammed Haniff Khan and others* reported in *2015(3) Bom.C.R. 466.*

4. Learned Advocate Shri Bhamburkar expressed desire to withdraw the Civil Application (CAS) No.1048/2018 and asked for time to file an application under the relevant Rule of order 22 of the Code of Civil Procedure. While going through the record, Civil Application (CAS) No.1004/2010 and Civil Application (CAS) No.1005/2010 were noticed. Though there is a prayer for bringing the name of respondent No.3-d and for condonation of delay, the foundation of those applications is the Will-Deed (relationship is described as legatee). Those two applications could have been considered as an application filed by respondent No.3-d as his nephew. However it cannot be. Because the foundation of those application is legatee. At the same time, the Civil Application (CAS) No.1048/2018 could have been considered under Order 22 but unfortunately it could not be considered because there is a prayer for transposition.

5. After hearing them and after going through the record this Court does not prevent itself from saying that even every litigation is having its own fate.

6. When the proposed appellant does not want to prosecute Civil Application (CAS) No.1004/2010 and Civil Application (CAS) No.1005/2010, this Court cannot compel him to prosecute those applications. In view of that, the following order is passed.

ORDER

1. Civil Application (CAS) No.1004/2010 and Civil Application (CAS) No. 1005/2010 are disposed of as not pressed.
 2. Civil Application (CAS) No.1006/2010 is disposed of in view of the observations in the order dated 29.06.2018.
 3. The respondent No.3-d is granted one week's time to file an application to seek permission to bring his name on record as a nephew of deceased/appellant.
 4. This Court can have a hope that the proposed appellant will also file necessary connected applications.
 5. Time is granted without expressing any comment on merit of those proposed applications.
 6. If the proposed appellant will not file those applications within a week, Civil Application (CAS) No.1048/2018 stands disposed of without reference to the Court. In such an eventuality the appeal will also stand abated.
- Matter be kept on **31.08.2021**.

JUDGE