

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 SECOND APPEAL NO.1499 OF 2004
WITH CA/10882/2004 IN SA/1499/2004

KASHINATH MADAN CHAUDHARI AND OTHERS
VERSUS
RAJARAM GOVIND CHAUDHARI AND OTHERS

...
Advocate for Appellants : Mr. Prashant Deshmukh h/f. Mr. S. S. Nirkhee
...

CORAM : MANGESH S. PATIL, J.

DATE : 06 APRIL 2022

PC :

Heard learned advocate Mr. Deshmukh for the appellanta.

2. By the order dated 12-08-2009, it was specifically observed and concluded that the decree was passed in favour of all the plaintiffs including the respondent nos. 1, 6 and 7. They having died and no steps being taken to bring on record their LRs, the appeal not only would stand abated as against them but even in the entirety. The order reads as under :

"1. It is reported that Respondent No.1 – Rajaram Govind Chaudhari, Respondent No.6 – Kantaben w/o Dagdu Chaudhari and Respondent No. 7 – Motaben w/o Luxman Chaudhari have died during continuance of the proceedings. Appellants-original defendants have not taken steps for bringing legal representatives of concerned plaintiffs/respondents on record. The appeal, as against them, came to be dismissed by virtue of the order passed by this Court on 18.02.2009. Suit presented by plaintiffs / respondents was for seeking decree of declaration of ownership and perpetual injunction as well as for mandatory direction to the defendants in respect of removal of encroachment alleged to have been committed by them. Suit presented by plaintiffs came to be decreed by the trial Court on

31.03.1995. The first appeal presented by defendants came to be dismissed by the first appellate Court on 31.10.2002. The decree passed by the trial Court against defendants and in favour of plaintiffs is composite amongst all the plaintiffs. Considering the nature of relief claimed by the plaintiffs, in my opinion, appeal against remaining plaintiffs cannot proceed. The decree passed in favour of original plaintiffs no. 1, 6 and 7 has become conclusive and final and in view of failure on the part of appellants to bring legal representatives of concerned respondents/original plaintiffs on record. Considering nature of the claim, which is inseparable, according to me, appeal against remaining respondents – original plaintiffs cannot proceed. The whole appeal, therefore, shall have to be dismissed as abated.

2. *Appeal stands dismissed as abated."*

3. It appears that subsequently by passing separate orders on CA/11895/2011, CA/11896/2011 and CA/11897/2011, the abatement to the extent of respondent nos. 1 and 7 was set aside and the LR's were allowed to be brought on record by the separate orders dated 12-06-2015.

4. Apart from the fact that, since thereafter the appellants are idle in carrying out necessary amendment, the order to the extent of respondent no. 6 holding the entire appeal to have abated stands. Consequently, the second appeal is disposed of.

5. Civil application no. 10882 of 2004 stands disposed of.

[MANGESH S. PATIL]
JUDGE

arp/