

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 1812 OF 2021
IN
SECOND APPEAL NO. 61 OF 2020**

Baban @ Vijaykumar Ganpatrao Patil ...Applicant
vs.
Mahadeo Dhondiram Patil (Decd.
Thr. LRs) Alka Mahadev Patil and Ors. ...Respondents

**ALONGWITH
INTERIM APPLICATION NO. 2373 OF 2022
IN
SECOND APPEAL NO. 61 OF 2020**

Baban @ Vijaykumar Ganpatrao Patil
(Decd. Thr. Lrs) Smt. Malan
Vijaykumar Patil and Ors. ...Applicants
vs.
Mahadeo Dhondiram Patil (Decd.
Thr. LRs) Alka Mahadev Patil and Ors. ...Respondents

Ms. Vishakha Shelar i/by Mr. Pratap Patil - Advocate for the Applicant
Mr. Panchshil Patil a/w Mr. Akshay A. Kulkarni - Advocate for the
Respondent Nos. 1A to 1D.

CORAM : S. M. MODAK, J.

DATE : 22nd AUGUST 2022

P. C. :-

1. The Second Appeal No. 61 of 2020 was heard by this Court on 25/02/2021. It was adjourned as learned Advocate Shir Ashutosh Kulkarni for Respondent Nos. 1A to 1D sought time to take instructions on

the point of status of the execution, if filed.

2. Then the legal representatives of the present Appellant filed Interim Application No. 2373 of 2022 for bringing them on record as the original Appellant – Baban expired on 12/09/2021. It is submitted that circulation for that Interim Application is granted on 24/08/2022. Whereas today's circulation is granted for Interim Application No. 1812 of 2021 (which is application for bringing legal heirs of Respondent No. 2).

4. It is really disgusting that two separate dates are sought for two separate Interim Applications in one and the same Appeal. Interim Application No. 2373 of 2022 is fixed on 24/08/2022.

5. As today, matter is on board, Interim Application No. 2373 of 2022 is also taken on board.

6. Perused the same. Copy of the death certificate is annexed to that application. The Applicants relied upon Order dated 10/01/2022 passed by the Hon'ble Supreme Court in suo-moto Petition passed during the Covid restrictions.

7. Heard learned Advocate for the Respondent No. 1 also. He has opposed the same.

8. In view of that, the Interim Application No. 2373 of 2022 is allowed in terms of prayer clause 'a'. The name of the sole Appellant be deleted and necessary amendment be carried out within two weeks. Amended

copy be served on Respondent No. 1.

9. Interim Application No. 2373 of 2022 is disposed of.

10. Office not to list the Interim Application No. 2373 of 2022 on 24/08/2022.

INTERIM APPLICATION NO. 1812 OF 2021

11. Heard, learned Advocate for the newly added Appellants as per Order passed on Interim Application No. 2373 of 2022.

12. The Appellant and one Ramchandra were two defendants whereas present Respondent No. 1 is the plaintiff. The suit for injunction was decreed. The appeal filed by both the defendants Ramchandra and Baban was dismissed. This Second Appeal is filed only by defendant no. 2-Baban. Original Defendant No. 1-Ramchandra has not filed Appeal. He is Respondent No. 2.

13. Respondent No. 2-Ramchandra expired on 27/11/2018. Copy of the death certificate is annexed. There is delay of two years in filing present Application. The reason offered is that according to the Appellant deceased Ramchandra has sold his share by way of sale deed and the Appellants formed opinion as per their own understanding that he may not be required but in execution filed by the Respondent No. 1, Ramchandra is one of the judgment debtor. After realizing the real mistake the present application is filed. It is opposed on behalf of the

Respondent No. 1-original plaintiff. According to them there is no reason for condonation of delay.

14. As Respondent No. 2 was already described as one of the Respondent, his legal representatives needs to be brought on record and delay needs to be condoned but subject to cost.

15. Hence the Order :-

ORDER

- (i) Interim Application No. 1812 of 2021 is allowed in terms of prayer clauses 'a', 'b' and 'c' subject to deposit of cost of Rs. 2,000/- to be paid within two weeks to the Kirtikar Law Library.
- (ii) Necessary amendment be carried out in the appeal memo within two weeks.
- (iii) After deposit of cost, notice be issued to the Respondent Nos. 2A to 2D, returnable on 16/11/2022.
- (iv) Additionally, private notice is allowed and service affidavit be filed.

[S. M. MODAK, J.]