

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.788 OF 2017
WITH
CIVIL APPLICATION NO. 1547 of 2017
WITH
INTERIM APPLICATION NO. 3242 OF 2020

Husen Papa Pathan .. Appellant

Versus

Jannatbai @ Malanbi Nizam Shaikh .. Respondent

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Mr.Ashok B. Tajane for the Appellants/Applicants.

Ms.Rekha Musale for the Respondent Nos.1C and 1D.

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CORAM: BHARATI DANGRE, J.

DATED : 15th MARCH, 2022

P.C:-

1. Pending the Second Appeal, respondent No.1 has expired on 11/07/2019. In the wake of the aforesaid development, when the death certificate of respondent No.1 being on record, Interim Application No.3242 of 2020 came to be filed on 07/03/2020, for bringing her legal heirs.

In bringing the said application, there is a delay of 154 days.

Heard the learned Advocate Mr.Tajane and perused the application, which justify the relief prayed in the application. The application is allowed in terms of prayer clauses (a), (b) and (c). The necessary amendment be carried out within a period of one week from today. On the legal heirs being brought on record, issue notice to the newly added respondents, making it returnable on 11/02/2022. The interim application stands disposed off.

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2. Appeal is admitted on the following substantial questions of law.

“A. R.C.S. No.6/2014 was filed in the Court of Hon’ble C.J.J.D., Mohol for partition and separate possession without joining the appellants who are also having right in the suit property and they are also having share in the suit property being the legal heirs of original owner, and by suppressing the said fact consent decree was obtained thereby depriving the rights of the Appellants and hence whether the appellate Court was required to set aside the same.

B. When the Learned Lower Appellate Court has granted permission to file the Appeal and condoned the delay in such a situation after accepting the rights of the Appellant and considering them as aggrieved parties ought not to have dismissed the Appeal on the ground that the same is not maintainable as per Section 96(3) of CPC.”

3. The learned counsel Ms.Rekha Musale waives service of notice for newly added respondent Nos.1C and 1D.
4. On the appeal being admitted, issue fresh notice to respondent Nos.2 to 6, intimating about admission of appeal.
5. The ad-interim relief in favour of the appellant to continue till the next date.

(SMT. BHARATI DANGRE, J.)