

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.244 OF 2016
IN
SECOND APPEAL NO.775 OF 2001
ALONG WITH
CIVIL APPLICATION NO.38 OF 2022

Sahablal Amankhan Jamadar & Ors.] ... Applicants

Vs.

Al Haj Sayyad Khundmir Bashamiya]
Sayyad Ajamsaheb Pirjade] ... Respondent

...

Mr. Y. G.Thorat i/b Mr. Ashok B. Tajane for the applicants in Civil Application No.244 of 2016 and for respondent Nos.1 to 12 in the appeal.

Mr. Ashutosh Gole for the appellants.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 13TH APRIL, 2022.

P.C. :-

CIVIL APPLICATION NO.38 OF 2022

1. By the present application, the applicant seeks his substitution in place of the original appellant in the second appeal

and condonation of delay of 131 days in bringing the present application.

2. Heard the learned counsel for the applicant and the learned counsel for respondent Nos.1 to 12.

3. The applicant is the successor and son of original appellant, who had instituted the second appeal. The original appellant expired on 08/07/2015 and it is the claim of the applicant that he is appointed as his successor by performing customary ceremonies, which were given wide publicity in local newspapers. It is stated in the application that nobody has raised any objection about his appointment as successor of the original appellant.

4. On demise of the original appellant, the applicant seeks his substitution as successor of the appellant since a right to sue has accrued to him on the demise of the original appellant, Al Haj Sayyad Khundmir Bashamiya Sayyad Ajamsaheb Pirjade. Claiming that he is the successor, his name is sought to be brought on record of the second appeal. The application is accompanied by the death certificate of the original appellant dated 08/07/2015.

5. Since the applicant came to be appointed as successor of the original appellant, the application deserves to be allowed by condoning the delay of 131 days in filing the application, which is sought to be justified in paragraph 3 of the application.

6. I deem it expedient to allow the application and set aside the abatement of the appeal. It is also to be noted that there are 1092 respondents in the application, who are the villagers of the said village, where the subject properties are situated. Since it is a herculean task to serve all the aforesaid respondents before hearing the civil application, I have heard the learned counsel for the applicant and the learned counsel for respondent Nos.1 to 12 and on perusal of the application, I deem it expedient to grant the application.

7. Civil application is allowed in terms of prayer clauses (a), (b), (c) and (d). The necessary amendment to be carried out in the appeal within one week from today.

8. Since the appeal is pending since 2001, the parties are at liberty to circulate the appeal after summer vacation.

CIVIL APPLICATION NO.244 OF 2016

9. In the wake of the disposal of Civil Application No.38 of 2022, Civil Application No.244 of 2016 does not survive for consideration and is dismissed.

[SMT. BHARATI DANGRE, J.]