

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO.90 OF 2020
WITH
MISC. CIVIL APPLICATION NO.1936 OF 2021(F)
WITH
MISC. CIVIL APPLICATION NO. 2635 OF 2021 (F)
IN
SECOND APPEAL NO. 140 OF 2012
MISC. CIVIL APPLICATION NO.90 OF 2020**

KALPA KASHINATH GADEKAR THR.
HIS POA, KASHINATH L. GADEKAR. APPLICANT.

Versus

TEREZA FERNANDES (DEC) ANDRESPONDENTS
ANOTHER.

**Mr Shivan Desai, Mr Nathan Vaz, Mr A. Sardessai, and
Ms M. Viegas, Advocates for the Applicant.**

**Mr S.S. Kantak, Senior Advocate, with Mr Abhijeet
Kamat, Ms Neha Kholkar, and Ms Saicha Desai,
Advocates for the Respondents.**

**WITH
MISC. CIVIL APPLICATIONS NO.1936 & 2635
OF 2021 (F)**

RAMAKANT SUBRAO SHETYE. APPLICANT.

Versus

KALPA KASHINATH GADEKAR
THR. HIS POA, KASHINATH
L. GADEKAR. RESPONDENT.

Mr S.S. Kantak, Senior Advocate with Mr Abhijeet Kamat, Ms Neha Kholkar, and Ms Saicha Desai, Advocates for the Applicant.

Mr Shivan Desai, with Mr Nathan Vaz, Mr A. Sardesai, and Ms M. Viegas, Advocates for the Respondent.

CORAM : M. S. SONAK, J.

Reserved on : 17th February 2023.

Pronounced on : 18th February 2023.

ORDER:-

- 1.** Heard the learned Counsel for the parties.
- 2.** By an order dated 7th September 2022, this Court had disposed of Misc Civil Applications No. 1936/2021(F), 2635/2021(F), and 90/2020 in Second Appeal No.140/2012. However, the order dated 7th September 2022 was reviewed by an order dated 17th November 2022. Accordingly, these three Misc. Civil Applications were restored and taken up for consideration afresh.
- 3.** The factual background leading to the institution of the above three Misc. Civil Applications in Second Appeal No.140/2012 is summarized for the convenience of reference.
 - (a) The respondent filed Special Civil Suit No.26/1997 against

Smt. Tereza Fernandes and Paul Fernandes seeking a decree of specific performance. The respondent-Kalpa raised a counterclaim and sought a declaration about the Agreement for Sale being null and void. During the pendency of this suit, Tereza and Paul sold this property to Ramakant Shetye vide a Sale Deed dated 16.08.2006.

(b) The respondent - Kalpa, instituted a separate suit bearing Special Civil Suit No.44/2006/A to challenge the Sale Deed dated 16.08.2006. This suit is still pending between the parties. On 27.08.2010, the Trial Court dismissed Special Civil Suit No.26/1997 but decreed the counterclaim and declared the Agreement for Sale null and void.

(c) The first appellate Court on 25.05.2012 allowed the Appeal, decreed the suit, and dismissed the counterclaim. Therefore, Tereza and Paul filed Second Appeal No.140/2012 before this Court, in which the order dated 07.09.2022, of which review was applied, came to be made. This Second Appeal was admitted on 10.07.2013.

(d) During the pendency of this Second Appeal, the Appellants Paul and Tereza expired on 23.02.2015 and 26.10.2019 in Mumbai. On 04.02.2020, the respondent - Kalpa, filed Misc. Civil Application No.90/2020 in Second Appeal No.140/2012

urging dismissal of the second Appeal as abated. In this application, Kalpa pleaded that both the Appellants have expired without leaving behind any heirs. Death certificates concerning both Appellants were enclosed along with this civil application.

(e) On 16.03.2020, Ramakant filed an application deleting the names of Tereza and Paul as respondents in Writ Petition No.1128/2019. Ramakant filed this Writ Petition to challenge an interim order made in Special Civil Suit No.44/2006/A. From this, it is apparent that Ramakant was aware of the demise of Tereza and Paul at least by 16.03.2020.

(f) On 17.09.2021, Ramakant filed Misc. Civil Application No.1936/2021(F) in Second Appeal No.140/2012, seeking inter alia his substitution in place of the deceased appellants Tereza and Paul, his addition as an Appellant, and for setting aside abatement. Any application for condonation of delay did not accompany this application.

(g) On 04.10.2021, Kalpa filed a response to oppose Misc. Civil Application No.1936/2021(F). She urged that the statement about the knowledge of the death of Tereza and Paul was false. On 11.10.2021, Ramakant filed an affidavit substantially accepting that the statement about knowledge of death was incorrect but explained the circumstances in which such a statement was made. Finally, on 14.12.2021, Ramakant filed

Misc. Civil Application No.2635/2021(F) seeking condonation of delay in moving Misc. Civil application No.1936/2021.

4. Misc. Civil Application No.90/2020 is filed by Kalpa, the original Respondent in Second Appeal No.140/2012. In this application, Kalpa prays that Second Appeal No.140/2012 be dismissed as abated based upon the following submissions in paragraphs 3, 4, and 5 of the application :

"3. The first appellant expired in Mumbai on 26/10/2019 and the second appellant expired earlier also in Mumbai on 23/2/2015. Annexed hereto death certificates of both the appellants.

4. Both the appellants have not left any heirs behind. The above second Appeal was filed by their Power of Attorney Shri. Ramakant Subrao Shetye resident of Sriram Smruti, Bordem, Bicholim, Goa.

5. The above second Appeal stands abated in entirety upon death of both the Appellants having left no heirs behind or having not brought them on record within the imitation period provided by Law or the abatement having been not set aside till date for a period of nearly 4 months and for a period of nearly 5 years respectively. The original Appellant No.2 i.e. Paul Fernandes shown in death certificate annexed is one and the same person."

5. Misc. Civil Application No.1936/2021(F) in Second Appeal No. 140/2012 is filed by Ramakant seeking his substitution in place of the deceased Tereza and Paul and his

addition as an appellant. In this application, there was also a prayer for setting aside abatement.

6. Misc. Civil Application No. 2635/2021(F) seeks condonation of delay in applying, setting aside abatement, if any.

7. Mr Kantak learned Senior Advocate for Ramakant submitted that the prayers for setting aside abatement and condonation of delay were unnecessary and may be taken as filed as a matter of abundant caution. He submitted that Kalpa repeatedly asserted that Tereza and Paul had died, leaving behind no legal heirs. He presented that in such a situation, the provisions of Order XXII, Rule 3 of CPC would not apply, and the case would be governed by the provisions of Order XXII, Rule 4-A of CPC. He submitted that under Order XXII, Rule 4-A, there is no question of abatement of the Appeal.

8. Mr Kantak submitted that Misc. Civil Application No.1936/2021(F) was made under Order XXII, Rule 10 of CPC. Under this provision, neither any issue of abatement was involved nor any period of limitation prescribed to seek substitution. He submits that Ramakant purchased the suit property by a registered Sale Deed from Tereza and Paul. He presents that this fact was recognized by Kalpa, who has instituted

Special Civil Suit No. 44/2006/A to challenge the said Sale Deed dated 16/8/2006. He, therefore, submits that Ramakant is an assignee of Tereza and Paul. Based on this, he urges that Misc. Civil Application No.1936/2021(F) may be allowed, and Ramakant be permitted to pursue Second Appeal No.140/2012.

9. Mr Kantak Relied on *Chandra Bai (Dead) through Lrs vs. Khandalwal Vipra Vidhyala Samiti & ors.*¹; *Sharadamma vs. Mohammed Pyrejan (Dead) through LRs. and anr.*² and *Dhurandhar Prasad Sing vs. Jai Prakash University and ors.*³ in support of the above contentions.

10. Mr Shivan Desai, learned Counsel for Kalpa, submitted that the Appeal stood abated under Order XXII, Rule 3 of CPC after no legal representatives were brought on record after the demise of Tereza and Paul within the prescribed period of limitation. He submitted that such an abatement is automatic and the effect of such abatement cannot be wished away by resorting to the provisions under Order XXII, Rule 10 of CPC. He submitted that the provisions of Order XXII, Rule 10 of CPC do not apply to a suit already abated in terms of Order XXII, Rule 3 of CPC.

1. (2016) 12 SCC 534

2. (2016) 1 SCC 730

3. (2001) 6 SCC 534

11. Mr Desai submitted that Kalpa was not adequately equipped to state whether Tereza and Paul died without leaving any legal heirs or representatives behind. He presents that the statements to this effect in the applications filed by Kalpa cannot be held as conclusively or create any estoppel. He submitted that Kalpa, in any case, had stated that the Appeal was abated for failure to bring the legal heirs of Tereza and Paul on record.

12. Mr Desai submitted that since Ramakant was aware of the above position, he applied for setting aside of abatement, followed by an application for condonation of delay. Ramakant made a false statement about being unaware of the demise of Tereza and Paul even though he was their power of attorney. Further, Ramakant had already acknowledged his knowledge by making an application on 16/3/2020 for deleting Tereza and Paul as Respondents upon their demise. Mr Desai, therefore, submitted that Misc. Civil Application No.1936/2021(F) should be dismissed because the same was not maintainable in an already abated appeal.

13. Mr Desai pointed out that even the sale deed based on which Ramakant claims an interest in the suit property was executed by Tereza and Paul by defying the temporary injunction order issued by the Civil Court, restraining them from selling or

alienating the suit property. He relied on *Shri Prakash Gobindram Ahuja vs. Ganesh Pandharinath Dhonde and ors.*⁴; *Surjit Singh and ors. vs. Harbans Singh and ors.*⁵; *Keshrimal Jivji Shah and anr. Vs Bank of Maharashtra and ors.*⁶ and *Vidur Impex and Traders Pvt. Ltd. and ors. vs. Tosh Apartments Pvt. Ltd. and ors.*⁷ to submit that such a sale deed is null and void and creates no interest in the purchaser.

14. Mr Desai finally submitted that Misc. Civil Application No.2365/2021(F) should also be dismissed because no sufficient cause was shown to condone the delay, and further, a false statement was made on oath by Ramakant.

15. Mr Kantak referred to Ramakant's affidavit dated 11/10/2021 on the issue of an incorrect statement about the knowledge of Tereza and Paul's demise. He pointed out that though the statement was wrong, the same was due to Ramakant's engaging two separate Advocates and miscommunication between such Advocates.

16. Mr Kantak pointed out that Ramakant had gained no advantage from the misstatement because, factually, there was a

4. 2016 SCC OnLine Bom 8884

5. (1995) 6 SCC 50.

6. 2004(3) Mh.L.J. 893

7. (2012) 8 SCC 384

delay in seeking to set aside abatement, if any. For this, he relied upon the order made by the Hon'ble Supreme Court extending the period of limitation due to the COVID-19 Pandemic reported in (2022) 3 SCC 117. Mr Kantak pointed out that Ramakant had tendered his unconditional apology for the misstatement. He pointed out that this Court has already imposed costs of ₹1,00,000/- on Ramakant while allowing the review petition instituted by Ramakant.

17. Rival contentions now fall for my determination.

18. Second Appeal No.140/2012 was instituted by Tereza and Paul through Ramakant as their power of attorney. Paul died on 22/3/2015, and Tereza died on 26/10/2019. Suppose they were to have left behind any legal heirs or legal representatives. In that case, steps should have been taken by such legal heirs or legal representatives to come on record within the prescribed period of limitation if they wanted to pursue Second Appeal No. 140/2012.

19. Kalpa filed Misc. Civil Application No.90/2020 on 4/2/2020 states that Second Appeal No.140/2012 stands abated. The reasons given by her in the said application were that Tereza and Paul had since expired without leaving behind any legal heirs. This is clear from a reading of paragraphs 3 and 4 of Misc. Civil

Application No. 90/2020, transcribed above for the convenience of reference. However, Kalpa now seeks to distance herself from her statements in paragraphs 3 and 4 by pointing out the averments in paragraph 5. In paragraph 5, Kalpa reiterated that the second Appeal stands abated upon the death of Tereza and Paul "*having left no heirs behind or having not brought them on record within the Limitation period....*".

20. Mr Desai emphasizes the underlined portion to suggest that it was also the case of Kalpa that there were some heirs, but such heirs failed to bring themselves on record.

21. Mr Desai's above contention based on the underlined portion referred to above is difficult to accept. Kalpa, in her Misc. Civil Application No.90/2020 has come up with a case that Tereza and Paul died, leaving behind no legal heirs. Further, Kalpa, in her response dated 4/10/2021 to Misc. Civil Application No.1936/2021(F), asserted in paragraph 16 that Tereza and Paul died, leaving behind no legal heirs or legal representatives. The same position was asserted by Kalpa in her response to Misc Civil Application No.2635/2021(F), opposing the condonation of delay.

22. Kalpa, as noted earlier, has instituted Special Civil Suit

No. 44/2006/A, in which Tereza, Paul, and Ramakant were the defendants. In this suit, Kalpa filed an application seeking the deletion of Tereza and Paul by contending that they had left behind no legal heirs.

23. Now, in terms of Order 22, Rule 3 of CPC, where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies, and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit. The provision in Order XXII, Rule 3 of CPC, applies to the Appeals, given the provisions of Order XXII, Rule 11 of CPC.

24. However, the provisions of Order XXII, Rule 3 presuppose that the plaintiff who has died has left behind some legal representatives so that steps as contemplated by Order XXII, Rule 3 could be taken. But, if the plaintiff has died without leaving behind any legal representatives, then the position is governed by Order XXII, Rule 4-A of CPC. Therefore, the concept of abatement would arise if the provisions of Order XXII, Rule 3 of CPC were to be attracted and not if the case is governed by Order XXII, Rule 4-A of CPC.

25. Order XXII, Rule 4-A of CPC provides that if, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment/order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit. Further, before making an order under this rule, the Court (a) may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit, and (b) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.

26. The critical expression in Order XXII, Rule 4-A of CPC is "*if, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal*

representative, ...". Now, based on the statement made by Kalpa in Misc. Civil Application No.90/2020 and her replies in Misc Civil Applications No.1936/2021(F) and 2635/2021(F), it does appear that Tereza and Paul died without leaving behind any legal representatives. Moreover, this position is further fortified by Kalpa's application in Special Civil Suit No. 44/2006/A, in which she again asserted that Tereza and Paul died without leaving behind any legal representatives.

27. Considering Kalpa's statements, it would not ordinarily be open to her, at least at the stage of deciding the present applications, to contend that her statements about Tereza and Paul dying and leaving behind no legal representatives are incorrect or may not be accurate.

28. Therefore, it will have to be held that the position in this Appeal was not governed by the provisions of Order XXII, Rule 3 of CPC, but by the provisions of Order XXII, Rule 4-A of CPC. Therefore, Mr Desai's argument about automatic abatement of the Appeal and the application under Order XXII, Rule 10 of CPC not being maintainable in an abated Appeal cannot be upheld.

29. On the same basis, Mr Kantak's contention that Ramakant

need not have sought for setting aside of abatement and consequently for condonation of delay in applying to set aside the abatement will have to be upheld.

30. Ramakant, undoubtedly, made an incorrect statement in Misc. Civil Application No. 2635/2021(F). However, Ramakant has filed an affidavit tendering his unconditional apology. Further, Ramakant has explained the circumstances in which such a statement came to be made. The explanation is plausible, though Ramakant ought to have been more careful in making a statement on oath.

31. Based on the material produced by Kalpa, it does appear that Ramakant was aware of Tereza and Paul's demise at least on 16/3/2019 when he applied Writ Petition No. 1128/2019 for deleting them as Respondents. Therefore, if any application for bringing their legal heirs was necessary, the limitation would have commenced from 16/3/2020. However, as noted above, it does appear that Tereza and Paul died without leaving behind any legal representatives. Further, the decision reported in (2022) 3 SCC 117 makes it clear that the Hon'ble Supreme Court extended the limitation period from 15/2/2020 to 28/2/2022. Therefore, Ramakant could have easily got the benefit of this extension.

32. Thus construed, it cannot be said that Ramakant, with some malafide intention, made a false statement to seek the condonation of delay. Ramakant undoubtedly made an incorrect or even a false statement, but considering all these circumstances, no case is made to deprive Ramakant of the opportunity to pursue the Second Appeal No.140/2012. Moreover, Ramakant has already paid Rs.1,00,000/- costs for making such a statement.

33. Now, coming to Misc. Civil Application No. 1936/2021(F), by which Ramakant has applied for substitution in place of the deceased Tereza and Paul in Second Appeal No.140/2012, there is no dispute that such an application is made under Order XXII, Rule 10 of CPC. In *Chandra Bai* (supra) and *Sharadamma* (supra), the Hon'ble Supreme Court has held that no limitation period is prescribed for applying under Order XXII, Rule 10 CPC. Further, the provision of Order XXII, Rule 10 of CPC does not contemplate any abatement as such. These decisions hold that the cause of action for filing an application under Order XXII, Rule 10 of CPC, accrues from day to day and can be exercised at any time during the pendency of the suit or Appeal. Therefore, it is clear that such an application could be rejected by citing any bar of limitation.

34. However, Mr Desai submitted that the sale deed dated

16/08/2006 was executed by Tereza and Paul, favouring Ramakant through power of attorney in the teeth of an undertaking furnished by Tereza and Paul on 17/12/1997 in Civil Misc. Application No. 128/1997/A in Special Civil Suit No. 26/1997/A. Tereza and Paul furnished this undertaking on an application for temporary injunction filed by Kalpa, seeking a restraint upon Tereza and Paul from selling, transferring or alienating the suit property.

35. The undertaking states that Teresa and Paul will not alienate/transfer or create any third-party transfer with respect to the suit property until the disposal of the suit. The record shows that this undertaking was accepted by the Trial Court, and based upon the same, Kalpa's application for temporary injunction was disposed of.

36. Thus, the record shows that Tereza and Paul sold the suit property vide registered Sale Deed dated 16/08/2006 to Ramakant by disregarding their own undertaking, which the Trial Court had duly accepted. Therefore, a case is made out of Tereza and Paul's sale of the suit property in defiance of a restraint order by the Trial Court. This is one of the grounds raised by Kalpa in her Special Civil Suit No.44/2006/A to challenge the registered Sale Deed dated 16/08/2006. This suit is pending adjudication.

37. In Special Civil Suit No. 44/2006/A, Kalpa sought a temporary injunction. However, such a temporary injunction was not granted by the Trial Court to Kalpa, even though Kalpa had contended that the registered Sale Deed dated 16/08/2006 was void because Tereza and Paul executed the same in the teeth of their own undertaking and consequent restraint by the Civil Court based upon the undertaking.

38. Mr Kantak submitted that Ramakant was a bona fide purchaser without notice of Special Civil Suit No. 26/1997/A or the restraint order therein. He submits that the fact that the temporary injunction was declined to Kalpa in Special Civil Suit No.44/2006/A suggests that Ramakant's case of being a bona fide purchaser, without notice of a prior encumbrance or the restraint order, was deemed to have been accepted.

39. Mr Kantak relying on *Thomson Press (India) Limited vs. Nanak Builders and Investors Pvt Ltd. and ors.*⁸; *M/s Trienity Prime Property Projects LLP & ors.*⁹; *Prakash Dattatraya Patil vs. Ismail Abdul Jamdar and ors.*¹⁰; and *Anil C. Gandhi and ors. vs. Manoharlal Kishorilal Gupta HUF & ors.*¹¹

8. (2013) 5 SCC 397

9. Interim Appln. (L) No.2566/2022 in Suit (L) No.29721/2021 decided on 18/07/2022

10. 2017 SCC OnLine Bom 5348

11. 2014 SCC OnLine Bom 1630

submits that a sale deed in defiance of a restraint order of the Civil Court is not void but merely subservient to the final order that might be made in the pending suit

40. Mr Kantak also relied on *Amit Kumar Shaw and anr. vs. Farida Khatoon and anr.*¹² to submit that no detailed inquiry at the stage of granting leave is contemplated. He offered that the issue of whether the registered Sale Deed dated 16/08/2006 was indeed in breach of the undertaking or the restraint order and further the issue of whether Ramakant was a bona fide purchaser or not and the effect of his being a bona fide purchaser can, all be gone into once the substitution is permitted. He submits that Ramakant had made out a more than prima facie case to establish his interest in the suit property and the presence of Ramakant is essential to pursue the Second Appeal No.140/2012, now that Tereza and Paul have expired, without leaving behind any legal representatives.

41. The decisions relied upon by Mr Desai, as referred to in paragraph 13 above, do suggest that a transfer or alienation by a party to a suit in defiance of an injunction or restraint order would be void. However, the decisions relied upon by Mr Kantak in paragraph 9 above, at least prima facie, suggest otherwise.

12. (2005) 11 SCC 403

Besides, in the above decisions, there is a discussion on the effect of the prospective purchaser being a bona fide purchaser without notice and the impact of such position on the sale, transfer, or alienation in defiance of the injunction order. At this stage, all that can be said is that these are arguable issues that would have to be considered in Second Appeal No.140/2012. However, based upon all such decisions, which would require in-depth consideration, it would not be appropriate to reject Ramakant's application for substitution under Order XXII, Rule 10 of CPC, thereby virtually terminating all further proceedings in Second Appeal No.140/2012.

42. In the above regard, a reference must be made to ***Amit Kumar Shaw*** (supra). In this case, the Hon'ble Supreme Court has held that under Order XXII, Rule 10 of CPC., no detailed inquiry at the stage of granting leave is contemplated. The Court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution. The question about the existence and validity of the assignment or devolution can be considered at the final hearing of the proceedings. The Court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit.

43. Based on the above observations, the Hon'ble Supreme Court held that the High Court had committed a serious error in not allowing the applications for substitution filed by the appellants. The Court held that the presence of the appellants is absolutely necessary in order to decide the appeals on merits. Since the High Court committed an error by rejecting the appellants' applications for substitution treating the same as additional parties and thereby rendering the appellants non-suited, the order of the High Court was set aside un-hesitatingly and the appellants were permitted to come on record by way of substitution as prayed for. Accordingly, liberty was granted to the appellants to contest the matter on merits.

44. Having regard to the above observations of the Hon'ble High Court explaining the approach to be adopted by the Court at the stage of considering whether the leave should be granted for substitution under Order XXII, Rule 10 of CPC, it would not be appropriate for me, at this stage, to go into the contention of Mr Desai that the Sale Deed dated 16/08/2006, was void because the same was in breach of the undertaking or breach of the restraint order of the Civil Court. At the same time, this would also not be an appropriate stage for going into Mr Kantak's contention about Ramakant being a bona fide purchaser without

notice or the argument that even a transfer in breach of an injunction order, is not void, but only subservient to the final outcome of the suit. All these matters can be considered at the stage of the final hearing of Second Appeal No. 140/2012 after Ramakant is permitted to be substituted in place of the deceased Tereza and Paul, given the Law in *Amit Kumar Shaw* (supra).

45. For all the above reasons, Misc. Civil Application No.90/2020 is dismissed. Misc. Civil Application No.1936/2021(F) is allowed, and Ramakant is permitted to be substituted as the Appellant in Second Appeal No.140/2012 in place of Tereza and Paul.

46. Further, since it is held that there was no abatement of Second Appeal No.140/2012, the reliefs for condoning the delay in setting aside abatement or for setting aside of abatement are redundant. Consequently, even Misc. Civil Application No.2635/2021(F) is disposed of.

47. However, it is clarified that merely because of Misc. Civil Application No.1936/2021(F) is allowed, and Ramakant is substituted in place of the original Appellants and permitted to prosecute Second Appeal No.140/2012, Mr Desai's contentions about the registered Sale Deed dated 16/08/2006 being void and

about Ramakant being not a proper relator in this Appeal, are not foreclosed. On this issue, all contentions of Mr Desai and Mr Kantak are left open to be decided at the final disposal of Second Appeal No.140/2012.

48. Ramakant is permitted to carry out necessary amendments to the cause title within ten days from today.

49. Once the above amendment is carried out, place the Second Appeal No.140/2012 for a final hearing.

50. All Misc. Civil Applications are disposed of in the above terms. There shall be no order for costs.

M. S. SONAK, J.

SANTOSH S
MHAMAL

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