

Dusane

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

**CIVIL APPLICATION NO.440 OF 2010
IN
SECOND APPEAL NO. 147 OF 1996**

Smt. Balabai Ramu Siradvade ...Applicant

V/s.

Shri. Shankar Narayan Bargale ...Respondents
& Ors.

BHALCHANDRA
GOPAL
DUSANE

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BHALCHANDRA
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Mr. Akshay Kulkarni for Applicants.

Mr. R.R. Patil i/by N.J. Patil for Respondent nos. 1A
to 1D.

**CORAM: MADHAV J. JAMDAR, J.
DATE: 5th JANUARY, 2023**

P.C.:

- 1.** Not on board. Taken on board.
- 2.** Heard Mr. Kulkarni, learned Counsel appearing for the Applicant- Smt. Balabai Siradvade and Mr. Patil, learned Counsel appearing for Respondent nos. 1A to 1D.
- 3.** Mr. Kulkarni states that by mistake Appellant nos. 2 to 8 were impleaded as the Appellants. He submits that the dispute is between the Plaintiff- Shankar Narayan Bargale (deceased),

who is now represented by Respondent nos. 1A to 1D. He points out the judgment and decree of the learned trial Court dated 21st April 1989 passed in Regular Civil Suit No. 10 of 1982. In the said judgment in paragraph 3, it is specifically recorded that though the Suit summons were duly served, original Defendant nos. 2 to 6 remained absent and they were directed to be proceeded *ex-parte*. Thereafter after the death of Defendant no. 2, Defendant nos. 2A to 2C were brought on record and they were also served and as they were absent, Suit proceeded *ex-parte* against them.

4. It appears that in the appeal also, the Respondent nos. 2 to 8 i.e. present Appellant nos. 2 to 8 have not appeared.

5. Mr. Kulkarni states that although name of Respondent nos. 2 to 8 were shown as the Appellants, even Vakalatnama on their behalf was not filed. Mr. Kulkarni, learned Counsel appearing for Appellant no.1 as well as Mr. Patil, learned Counsel appearing for Respondent nos. 1A to 1D i.e. the legal heirs of deceased-Shankar Bargale state that Respondent nos. 1A to 1D are the only contesting Respondents and they have settled the dispute between them.

6. For the above reasons and the reasons set out in the Civil Application, the Civil Application No. 440 of 2010 is allowed in terms of prayer clause (a).

7. Appellant nos. 2 to 8 be transposed as Respondent nos. 2 to 8 forthwith and accordingly title of the Second Appeal be corrected.

(MADHAV J. JAMDAR, J.)