

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 17734 OF 2023
IN
FIRST APPEAL NO. 120 OF 2002

Mr. Venzil Joe Henriques And Ors. ...Applicants

In the matter between:

Victor Kenny ...Appellant

Versus

Mr. Joe Henriques & Ors. ...Respondents

Ms. Swati Parag Gawtam a/w. Ms. Roma Bhende Lotlikar, Advocate
for Applicants.

Ms. Tanaya Goswami, AGP for Respondent No.2.

CORAM : M.M. SATHAYE, J.

DATE : 11th DECEMBER, 2023

P.C. :

1. This is an Interim Application filed by legal heirs of original Plaintiff (Joe Henriques) who is present Respondent No. 1 in the above Appeal, filed by original Defendant No.1 (Victor Kenny) who is sole Appellant.

2. Heard learned counsel for the Applicants. Heard learned AGP for the Respondent No. 2 / State. Learned counsel for the Applicants has placed on record affidavit of service evidencing that notice of today's hearing was given to Advocate J. N. Shetty who was appearing for original Appellant/Defendant No.1 Victor Kenny.

3. Learned counsel for the Applicants invited this Court's

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attention to the impugned Judgment and Decree, which shows that the learned Judge of City Civil Court, Greater Bombay, by its Judgment and Decree dated 11/01/2000 passed in Long Cause Suit No. 8023 of 1987 has decreed the said suit, thereby holding the original Plaintiff - Mr. Joe Henriques owner of the suit property - Plot No. 36 and also holding Defendant No. 1 - Mr. Victor Kenny as trespasser who is liable to be evicted from the suit property.

4. Perusal of the Order dated 10/01/2001 passed by this Court in CA/7403/2000 shows that the prayer of the original Appellant/Defendant No. 1 for restoration of the possession of suit premises was rejected. Perusal of the further Order 16/04/2002 passed in CA/7404/2000 further shows that the prayer for interim stay made by the Appellant/Original Defendant No. 1 was also rejected as infructuous, because till that time, the impugned Decree was already executed by the Applicants' predecessor Joe Henriques and possession was already obtained by him.

5. In these set of facts, learned counsel for the Applicants urged that since the original Appellant died way back on 10/05/2011 and nobody has come forward till date to prosecute the present Appeal, the same may be dismissed. The Applicants have produced copy of death certificate of sole Appellant at Exhibit "C" page 15 of the Application.

6. In view of the aforesaid facts and circumstances, it is obvious that after death of the sole Appellant/Defendant No. 1, the law has taken its own course and the Appeal is already abated. Nobody has

come forward till date on behalf of the original Appellant/Defendant No. 1 claiming that right to sue has survived or to prosecute the Appeal as his legal heirs.

7. In such circumstances, the present Appeal is dismissed as abated. No order as to costs.

8. This interim Application is disposed off. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)