

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAS) NO.271/2023

IN

SECOND APPEAL NO.148/2016

Manik s/o Bhanudas Labhane

Vs.

Ku. Sandhya d/o Bhanudas Labhane and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.P. Kariya, Advocate for appellant
Shri A.S. Moon, Advocate for respondent No.1

CORAM : SMT. M.S. JAWALKAR, J.

DATED : 23/03/2023

Leave to amend the title clause is granted.

2. The present application is filed for bringing the legal heirs of appellant on record. The appellant has challenged the legality and propriety of judgment passed by Ad-hoc District Judge-1, Kelapur in Regular Civil Appeal No.30/2006 dated 10/08/2005 thereby partly rejecting the appeal and modified the judgment and decree dated 10/08/2005 passed in Special Civil Suit No.113/2001. During the pendency of the First Appeal, the appellant Manikrao Bhanudas Labhane was missing and nobody knows whereabouts of him. However, appeal was continue and finally decided.

3. The present appeal has been filed by the son of original appellant Manikrao Labhane. The said Manikrao Labhane is missing from last 12 years and therefore, legal heirs of Manikrao Labhane filed application under the Bombay Regulation Act for

grant of legal heir certificate. Accordingly, the learned Joint Civil Judge Junior Division Ralegaon declared applicant therein as legal heirs of deceased Manikrao Labhane. The said certificate is dated 15/12/2022. In view thereof, applicants prayed for substitute their names as appellant in the matter.

4. The learned Counsel for respondents opposed the application. It is submitted that there is no reference of missing of Manikrao Labhane from 29/03/2012 and stay is obtained suppressing material facts. There is also contended that there is provision in Civil Procedure Code under Order 21 to bring the legal heirs on record and under Order 21 Rule 10-A, is specified that duty of pleader to communicate to the Court death of a party. However, in view of this peculiar fact that he was missing, there is no question of reporting any date to the Court. As such, from the date of declaration of death, it is necessary to substitute all the legal heirs in place of deceased appellant. Accordingly, the application is allowed.

5. Necessary amendment to be carried out within a week to substitute their names as mentioned in paragraph No.7 of the application as appellants.

JUDGE

R.S. Sahare