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951-fa-988-13

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**951 FIRST APPEAL NO. 988 OF 2013
WITH
CIVIL APPLICATION NO. 5221 OF 2024**

**MANGALBAI VISHWANATH THORAT
VERSUS
GAYABAI SHRIPATI THORAT, L.RS. KUSUM AND OTHERS**

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Advocate for Appellant : Mr. V. S. Kadam
Advocate for Respondent Nos. 1A to 1B, 2 to 4, 4A : Mr. Abhijit S. More

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 22.10.2024

PER COURT :

1. Heard the learned counsel appearing for the Appellant as well as the Respondents.
2. During the pendency of the present Appeal, Respondent No.4 Satish Babasaheb Dunghav reported dead. Accordingly, the Appellant has filed Civil Application No. 5221 of 2024 for bringing the legal heirs of the deceased Respondent No. 4, on record.
3. Mr. Abhijit S. More, learned counsel waives notice on behalf of the proposed legal heirs.

4. Since the cause of action survives and the Appellant wanted to bring L. Rs. of deceased Respondent No. 4 on record, therefore, Civil Application No.5221 of 2024 is hereby allowed. The delay, if any caused for bringing the legal heirs of respondent No.4 is hereby condoned on the ground of set out in the application. Consequently, the abatement is set aside. Accordingly Civil Application No. 5221 of 2024 is disposed off.

5. The Appellant to carry out necessary amendment within period of 3 days from today.

6. Needless to say that, the present Appellant is the original plaintiff in Special Civil Suit No. 49 of 2009. On 18.01.2013, the learned 2nd Joint Civil Judge (S.D.), Osmanabad passed the impugned judgment, decree and granted injunction restraining the defendants from disturbing the possession of the plaintiff over the suit property. However, the Trial Court refused to grant declaration about execution of sale-deed dated 06.06.2008 by the defendant No.1 in favour of the defendants No. 2 to 4 being bogus and fictitious. The plaintiff valued the suit property as per the revenue assessment. But due to increase of pecuniary jurisdiction as per Government gazette dated 29.07.2015, the

appeal lies before the District Judge. Therefore, the present Appeal is withdrawn from the file of this Court and transferred to the file of the District Judge, Kallam.

7. The Registrar (Judicial) of this Court shall remit the entire case to the learned District Judge, Kallam, District Osmanabad.

(Y. G. KHOBRAGADE, J.)

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