



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 11729 OF 2023
IN SA/38/2013

MUZAMMIL KHAN CHAND L.RS.
YASIN KHAN MUZAMMIL KHAN AND OTHERS
VERSUS

SYED AHMED SYED NIZAM AND ORS

.....
Advocate for Applicant : Mr. Shaikh Mujtaba Gulam Mustafa
Advocate for Respondents : Mr. Suresh P. Salgar
.....

CORAM : Y.G. KHOBRAGADE, J.
DATE : 02.04.2024

PC.:-

1. At the request of the learned counsel for the respondents, leave to delete respondent no.2 in second appeal is granted at his risk and peril.
2. Heard Mr. Shaikh Mujtaba the learned counsel appearing for the applicants and Mr. Salgar the learned counsel appearing for the non-applicants at length.
3. The applicants are the original legal heirs of original respondent no.1 to the second appeal have filed present application and prayed for vacation of status quo order dated 26.06.2023 passed by this Court in civil application no.6578/2023.

4. The learned counsel appearing for the applicants submits that non-applicant preferred second appeal no.38/2023 challenging the judgment and decree dated 11.12.2012 passed by the learned District Judge-1, Aurangabad in RCA No.301/2006 arising out of the judgment and decree dated 16.09.2006 passed by the learned 5th C.J.J.D., Aurangabad in RCS No.621/2004. On 06.02.2023, the second appeal was admitted by framing substantial questions of law. The non-applicant/original appellant had filed civil application no.678/2013 for grant of stay, however, the learned counsel for the applicants gave undertaking that his client will not insist for execution of the impugned decree till disposal of the appeal, however, subsequently the non-applicant had filed an application in which the respondent no.2C - Zuber Ayub Khan was made party as a legal heir of deceased-respondent no.2 but no person exists in such name and the non-applicants / original appellants gave the wrong name of legal heirs of deceased respondent no.2. So also, further the notice was issued at the Court motion on 25.02.2022. According to the learned counsel for the appellants/applicants, the original appellant has not taken steps to correct the name of legal heirs of the respondent no.2 on record and is enjoying the fruits of the interim order.

5. The learned counsel for the applicants further canvassed that the second appeal of the non-applicants was dismissed for want of prosecution,

however, it was subsequently restored vide order dated 10.04.2023.

6. Since the appeal has been restored at the same stage at which stage it was dismissed, therefore, the interim order which existed was automatically restored. The application filed by the present applicants for vacation of interim order merely on the ground that the non-applicants/original appellant failed to serve the legal heirs of deceased respondent no.2 which does not appear substantial for vacation of the interim order as the appeal is already admitted on 06.02.2023 by framing the substantial questions of law.

7. In view of the above, the present application is hereby rejected. Place the second appeal for final hearing in the week commencing from 24.06.2024.

[Y.G. KHOBRAGADE, J.]