

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

SECOND APPEAL NO.232 OF 2019

**Appasaheb Govind Tate
V/S**

....Appellant

Ridwan Mirasaheb Gaiban & Ors.

....Respondents

**WITH
INTERIM APPLICATION NO.18308 OF 2022
IN
SECOND APPEAL NO.232 OF 2019**

**Jaywant Appasaheb Tate
IN THE MATTER BETWEEN
Appasaheb Govind Tate
V/S**

....Applicant

....Appellant/Applicant

Ridwan Mirasaheb Gaiban & Ors.

....Respondents

**WITH
INTERIM APPLICATION NO.7234 OF 2024
IN
SECOND APPEAL NO.232 OF 2019**

**Rajan Hindurao Shinde
IN THE MATTER BETWEEN
Appasaheb Govind Tate
V/S**

....Applicant

....Appellant

Ridwan Mirasaheb Gaiban & Ors.

....Respondents

**WITH
INTERIM APPLICATION NO.7233 OF 2024
IN
SECOND APPEAL NO.232 OF 2019**

Nanda Jaysingrao Shendge & Ors.Applicants
IN THE MATTER BETWEEN
Appasaheb Govind TateAppellant
V/S
Ridwan Mirasaheb Gaiban & Ors.Respondents

WITH
SECOND APPEAL NO.684 OF 2019

Appasaheb Govind TateAppellant
V/S
Latif Mirasaheb Gaiban & Ors.Respondents

WITH
INTERIM APPLICATION NO.18310 OF 2022
IN
SECOND APPEAL NO.684 OF 2019

Jaywant Appasaheb TateApplicant
IN THE MATTER BETWEEN
Appasaheb Govind TateAppellant
V/S
Latif Mirasaheb Gaiban & Ors.Respondents

WITH
INTERIM APPLICATION NO.7231 OF 2024
IN
SECOND APPEAL NO.684 OF 2019

Rajan Hindurao ShindeApplicant
IN THE MATTER BETWEEN
Appasaheb Govind TateAppellant
V/S
Latif Mirsaheb Gaiban & Ors.Respondents

WITH
INTERIM APPLICATION NO.7232 OF 2024

**IN
SECOND APPEAL NO.684 OF 2019**

Nanda Jaysingrao Shendge & Ors.	Applicants
IN THE MATTER BETWEEN	
Appasaheb Govind Tate	Appellant
V/S	
Latif Mirasaheb Gaiban & Ors.	Respondents

Mr. Yuvraj P. Narvankar *for the Appellant/Applicant in both SAs and IA Nos.7231 of 2024 and 7234 of 2024.*
Ms. Prabha Badadare *for Respondent Nos.1 and 2 in SA 232 of 2019 and for Respondent Nos.1 to 3 in SA 684 of 2019.*
Mr. Surel Shah *a/w Mr. Rahul P. Kasbekar for Applicant in IA Nos.18310 of 2022, 18308 of 2022.*
Mr. Sumit Kothari *a/w Ms. Deepshikha Godbole for Applicant in IA 7232 of 2024 and 7233 of 2024.*

CORAM: SANDEEP V. MARNE, J.
DATE : 19 APRIL 2024.

P.C.:

1 When Interim Application Nos.18310 of 2022 and 232 of 2019 came up before this Court for bringing on record legal heirs of Late Appasaheb Govind Tate by impleading his son Jaywant Appasaheb Tate, this Court passed following order on 13 March 2024 :

1) These Appeals present a unique conundrum. The Appellant has expired during the pendency of the Appeals. There are multiple claimants, who seek right to represent the deceased Appellant. One Mr. Jaywant Appasaheb Tate son of the deceased Appellant-Appasaheb Govind Tate has

filed application seeking permission to represent deceased Appellant and to prosecute the Appeals.

2) *Mr. Kothari, the learned counsel who represents the daughters of late Appasaheb Govind Tate submits that daughters also wish to file application for being brought on record as legal heirs of the deceased Appellant.*

3) *Mr. Narwankar represents another individual, who claims to be the legatee under the Will allegedly executed by the deceased Appellant. He also desires to file application for being brought on record as legal heir of deceased Appellant.*

4) *Thus there are three sets of claimants who seek right to represent the deceased Appellant.*

5) *Inviting my attention to the Proviso to Order 22 Rule 5 of the Code of Civil Procedure, Mr. Shah, Mr. Narwankar and Mr. Kothari would urge that the issue needs to be referred to the Trial Court for the purpose of deciding the question as to who can represent the deceased Appellant. They would also rely upon the judgment of the Apex Court in **Jaladi Suguna (D) Th. Lrs vs Satya Sai Central Trust & Ors.** (2008) 8 SCC 521, in which, according to them, the Apex Court has held that Appeal cannot be decided unless the Appellate Court first resolves the dispute amongst multiple claimants who seek to represent the deceased party in the Appeal. Perusal of the operative portion of the Judgment of the Apex Court in para-19 would indicate that the Apex Court in that case has directed the High Court to first decide the issue of right to represent deceased party before proceeding to decide the Appeal on merits. The directions issued by the Apex Court in **Jaladi Suguna** (supra) when read in conjunction with use of the words “may” in Proviso to Order 22 Rule 5 of the Code would, prima-facie, indicate that reference of the issue to the Trial Court is not mandatory in every case. This Court would be also competent to decide the*

issue about competing claims amongst multiple persons seeking to represent deceased Appellant. As of now, clients of both Mr. Narvankar and Mr. Kothari, are yet to lodge their applications. They seek time to file applications on behalf of their respective clients.

6) However, what must be observed here is that on account of the dispute so created amongst the persons seeking to represent the deceased appellant, the Plaintiff-decree Holder continues to suffer. It appears that in the present Appeal, an order of remand was already made on 20 November 2019 on the issue of limitation, keeping the Appeals pending. The question is answered in favour of the Plaintiff by the first Appellate Court. Now, Mr. Shah, Mr. Narvankar and Mr. Kothari urge before me that this Court must refer competing claims amongst their clients with regard to the right of representation of the deceased Appellant, to the Trial Court. In my view such a course of action would further delay determination of the main issue involved in the Appeals. Let the Applications by clients of Mr. Narvankar and Mr. Kothari be filed within one week.

*List the Second Appeals for orders, **high on board on 21 March 2024.***

2 Now Interim Applications are filed by daughters of Late Appasaheb Govind Tate as well as by Mr. Rajan Hindurao Shinde who claims to be legatee under the Will allegedly executed by the deceased Appellant.

3 Ms. Badadare, the learned counsel appearing for Respondents would submit that she has no objection if all the Applicants namely, son, daughters and Mr. Rajan Shinde are brought on record as legal heirs of the deceased Appellant so that hearing the Appeals can progress.

4 While Mr. Narvankar does not have objection to the said course of action being adopted, Mr. Shah and Mr. Kothari would submit that in absence of establishment of his rights by Mr. Rajan Shinde to succeed to the estate of deceased Appellant, he cannot be straightaway taken on board in the present Appeals as legal representatives of the deceased Appellant. In addition to the judgment of the Apex Court in **Jaladi Suguna (deceased) through LRS vs. Satya Sai Central Trust & Ors.**, (2008) 8 SCC 521 which is referred to in the order dated 13 March 2024, they also place reliance on the judgments of Apex Court in **Karedla Parthasarathi vs. Gangula Ramanamma**, (2014) 15 SCC 789, **Varadarajan vs. Kanakavali**, (2020) 11 SCC 598 and **Mahanth Satyanand alias Ramjee Singh vs. Shyam Lal Chauhan & Ors**, (2018) 18 SCC 845.

5 According to Mr. Shah and Mr. Kothari all the four judgments emphatically hold that an inquiry under Rule 4 of Order 22 of the Code of Civil Procedure is mandatory about right to represent deceased party. They submit that the Apex Court has deprecated course of action taken where all the contestants are allowed to be impleaded as legal representative of a deceased party without conducting an inquiry under Order 22 Rule 4 of the Code of Civil Procedure. They particularly have objection to impleadment of Mr. Narvankar's client who is not a member of the family and claims rights in respect of the Will, which is not admitted by children of the deceased Appellant.

6 At the same time my attention is also invited to the judgment of the Apex Court in **Suresh Kumar Bansal vs. Krishna Bansal & Anr.**, (2010) 2 SCC 162, which involved somewhat similar circumstances. In the case before the Apex Court, Plaintiff-Mohanlal Bansal had filed the suit for eviction of the Defendant. He died during pendency of the proceedings and dispute arose between claimants to succeed to the estate of the deceased claimant. The Appellant before the Apex Court claimed that the deceased Plaintiff had executed a Will in his favour, on the basis of which, he was entitled to seek a decree of eviction from the tenant. On the other hand, the application for impleadment of the Appellant before the Apex Court was opposed by other heirs on the ground that the Will was suspicious. The Apex Court held in paragraphs 14, 17 and 24 as under :

"14 Having heard the learned counsel for the parties and after going through the impugned order as well as the application for substitution of the appellant on the basis of the will alleged to have been executed by the deceased plaintiff, we are of the view that the impugned order of the High Court is liable to be interfered with and the application for impleadment filed at the instance of the appellant on the basis of the will alleged to have been executed by the deceased plaintiff must be allowed and the appellant must be impleaded in the suit along with the natural heirs and legal representatives of the deceased plaintiff, subject to grant of probate by a competent court of law.

17 That apart, since the question of genuineness of the will cannot be conclusively gone into by the court in a proceeding for substitution in a pending eviction suit and in view of the fact that an application was made at the instance of the appellant for impleadment as a legal representative of the deceased on the basis of the will which is yet to be probated, in our view, the best course open to the court is to allow impleadment of the appellant in the eviction proceeding, thereby permitting him to proceed with the eviction suit along with natural

heirs and legal representatives of the deceased plaintiff, but in case the decree is to be passed for eviction of the tenant from the suit premises such eviction decree shall be subject to the grant of probate of the will alleged to have been executed by the deceased plaintiff.

24 In view of the aforesaid discussions and in view of the decision in *Jaladi Suguna*, we are also of the view that in an eviction proceeding, when a legatee under a will intends to represent the interest of the estate of the deceased testator, he will be a legal representative within the meaning of Section 2(11) of the Code of Civil Procedure, for which it is not necessary in an eviction suit to decide whether the will on the basis of which substitution is sought for, is a suspicious one or that the parties must send the case back to the Probate Court for a decision whether the will was genuine or not."

7 Thus in **Suresh Kumar Bansal** (supra) the Apex Court has approved impleadment of the Appellant therein, who was claiming rights on the basis of Will, subject to grant of probate of Will in his favour. Thus legatee under the alleged Will was permitted to be impleaded alongwith natural heirs and legal representatives of the deceased Plaintiff in **Suresh Kumar Bansal** (supra).

8 In the present case, hearing of the Second Appeal is delayed on account of disputes that have erupted between persons claiming to succeed to the estate of the deceased Appellant. With the result, Respondents who were the original Plaintiffs, are unable to enjoy the fruits of decree passed in their favour. Considering this peculiar facts and circumstances coupled with the course of action adopted by the Apex Court in **Suresh Kumar Bansal** (supra), in my view, all the three sets of claimants who have filed Interim

Applications, claiming right to represent deceased Appellant, can be impleaded in the present Appeal so that hearing of the Appeal can progress.

9 All the six Interim Applications in respect of both the Second Appeals are accordingly allowed. Applicants in the Interim Applications are permitted to be brought on record as legal representatives of the deceased Appellant.

10 The amendment to be carried out within two weeks from today. List the Second Appeals for admission on 12th June 2024.

11 Interim order granted earlier shall continue to operate till the next date of hearing.

(SANDEEP V. MARNE, J.)