



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Civil Application (CAS) No. 1073 of 2023

in

Second Appeal No. 98 of 2011

[Smt. Tarabai Chandrakant Vaidya (since dead) through her legal representative ..vs.. Dyaneshwar
Pujaramji Akare and ors.]

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

Court's or Judge's orders

Smt. Shilpa Giratkar, Advocate for the applicants/respondent nos. 12, 13(i
& ii), 14 and 15
Smt. M. N. Hiwase, Advocate for the appellants

CORAM : ANIL L. PANSARE J.

DATED : 30-01-2024

Circulation has been sought despite the fact that notices issued to respondent nos. 2(a) and 2(b) are awaited.

2. The application has been filed under Order 23 Rule 1(A) of the Code of Civil Procedure for transposition of respondent nos. 11, 12, 13, 13(1), 13(2), 14 and 15 as appellants. Order 23 Rule 1-A of the Code of Civil Procedure reads as under.

“1-A. When transposition of defendants as plaintiffs may be permitted. - Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I, the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.”

3. Learned counsel for the appellants submits that the appellants have nowhere indicated that they intend to withdraw the appeal or abandon the claim.

4. In view of the aforesaid statement, the application is misconceived. There is absolutely no merit in the application and hence is rejected.

Second Appeal No. 98 of 2011

5. The appellants shall take effective steps to serve respondent nos. 2(a) and 2(b) within two weeks, failing which, the appeal shall stand dismissed against these respondents. The appellants are at liberty to serve the respondents with all permissible modes. In that event, the appellant shall file affidavit of service.

6. List once the respondent nos. 2(a) and 2(b) are served.

(Anil L. Pansare, J.)