



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

**CIVIL APPLICATION NO. 13262 OF 2014
IN
SECOND APPEAL NO. 638 OF 2005**

Kundlik Keruji Hiwale
Since died through L.Rs.
Babasaheb Kundlik Hiwale and others .. Applicants

Versus

Gopalrao Rajarampant Muley
Since died through L.Rs.
Indu Gopalrao Muley and others .. Respondents

Shri Vishal A. Bagal, Advocate for the Applicants – absent.
Shri S. V. Natu, Advocate for the Respondent Nos. 1 to 4.
Shri Bhimrao R. Rathod, Advocate h/f Shri S. B. Bhapkar,
Advocate for the Respondent Nos. 6 and 7.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 25TH SEPTEMBER, 2025.**

FINAL ORDER :

. Heard.

2. Present application is filed for condonation of delay of 2090 days caused in filing application for setting aside abatement and bringing legal heirs of deceased applicant on record. Application is contested by learned counsel Mr. S. V. Natu, who is appearing for the respondent No. 1/Gopalrao/plaintiff.

3. None appears for the applicants. It reveals from record

that present application is filed in 2014 and it has not been prosecuted diligently. Due to pendency of the application second appeal which is admitted by this Court is not getting ready for final hearing.

4. Learned counsel Mr. S. V. Natu seriously contested the application and status of the legal heirs of applicant - Kundalik, who is respondent No. 12 in the second appeal, is the defendant No. 15 in a suit filed by the respondent No. 1 - Gopalrao for partition and possession. It is contended that no cause of action could ever survive against legal heirs of Kundalik. They are not necessary parties and the exercise is futile. It is not an application filed by the appellant of the second appeal, but one of the respondents who failed to challenge the decree passed by the lower Appellate Court dismissing his R.C.A. No. 61 of 1996.

5. Applicant - Kundalik is the original defendant No. 15, who claims to have purchased part of land Sy. No. 80 vide sale deed dated 19.04.1971 executed by the respondent No. 1. The suit was partly decreed. The sale transaction in favour of Kundalik was held to be not binding on the plaintiff. Being aggrieved, defendant No. 15 - Kundalik preferred R.C.A. No. 61 of 1996, so also respondent No. 1 - Gopalrao preferred R.C.A. No. 72 of 1996. By common judgment and decree, lower Appellate Court out rightly dismissed R.C.A. No. 61 of 1996 preferred by Kundalik, whereas R.C.A. No. 71 of 1996 filed by the respondent No. 1 - Gopalrao is partly allowed. To his extent decree passed by the

Trial Court has become final and binding. The legal heirs of Kundalik can have no role to play. They are the strangers and their rights are foreclosed. I find substance in the submissions made by learned counsel Mr. S. V. Natu.

6. Application preferred by legal heirs of Kundalik cannot be entertained. There is huge delay. Hence the civil application is rejected.

[SHAILESH P. BRAHME J.]

bsb/Sept. 25