



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 107 OF 2016

SHRI TUKARAM RAMBHAU SHINDE AND ORS.

VERSUS

CHHAYABAI VILAS WALUNJKAR AND ORS.

...

MR. A. B. GATNE, Advocate for Appellants

MR. P. U. GUJRATHI h/f MR. V. P. LATANGE, Advocate for Respondent

Nos. 1 to 4

...

WITH

CIVIL APPLICATION NO. 1649 OF 2016 IN SA/107/2016

WITH

CIVIL APPLICATION NO. 10886 OF 2016 IN SA/107/2016

...

CORUM : ROHIT W. JOSHI, J.

DATE : 21st MARCH, 2025

PER COURT :

1. This application is filed for bringing legal representatives of respondent No. 6 and 7 on record in Second Appeal No. 107 of 2016. The learned counsel for the applicants submits that this is the second round of litigation. In the earlier round of litigation the matter had come up to this Court in Second Appeal 52 of 2013. Respondent Nos. 6 and 7 had expired while the said Second Appeal was pending. An application being Civil Application No. 13945 of 2013 was filed in the said Second Appeal, which was allowed vide order dated 21.01.2015. Learned counsel states that in terms of the said order, the legal representatives of respondent Nos. 6 and 7 were brought on record in the Second Appeal. The Second Appeal thereafter, decided vide judgment dated 21.01.2015. This Court was pleased to remand the matter to the First Appellate Court for deciding the appeal afresh. The appeal came to be decided by the

learned First Appellate Court after the remand. The names of legal representatives of deceased respondent Nos. 6 and 7 were not incorporated in the cause title of the judgment passed by the learned First Appellate Court, although they were permitted to be brought on record. Learned advocate states that in that view of the matter, an inadvertent error has occurred while filing Second Appeal inasmuch as the names of the parties have been taken from the cause title of the judgment of the learned First Appellate Court. He states that as a consequence of this the names of deceased respondent Nos. 6 and 7 are mentioned in the cause title of the appeal, although they have expired and through legal representatives were allowed to be brought on record in Second Appeal No. 52 of 2013 itself.

2. It is apparent that respondent Nos. 6 and 7 had expired prior to filing of the present Second Appeal. Therefore, an application for bringing their legal representatives on record in the present Second Appeal will technically not be maintainable. However, since respondent Nos. 6 and 7 had already expired, the present application for incorporation of names of their legal representatives can be considered under Order I Rule 10 of Civil Procedure Code. Since the mistake is unintentional, I am inclined to allow the application permitting the names of legal representatives of respondent Nos. 6 and 7 to be impleaded as party respondents in the present Second Appeal, particularly in view of the fact that the names were allowed to be brought on record in the first round of litigation in Second Appeal No. 52 of 2013. In view of the above, the names of non-applicant Nos. 6A to 6E(4) are permitted to be impleaded as party respondents in the present Second Appeal in place of the deceased respondent No. 6. As regards deceased respondent No. 7, respondent No. 8 is his legal representative

who is already on record. Civil Application No. 10886 of 2016 is **disposed** of in aforesaid terms.

3. Since the legal representatives of deceased respondent Nos. 6 and 7 were parties in Second Appeal No. 52 of 2013 and also in Regular Civil Appeal No. 370 of 2004, the present application is decided without issuing notice to the proposed legal representatives.

4. Put up the appeal for hearing on admission on 28.04.2025.

5. Notices to the legal representatives of respondent Nos. 6 and 7 will be issued only if the appellant is able to satisfy that a substantial question of law arises for consideration.

[ROHIT W. JOSHI]
JUDGE

KS_Kamble/