



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

36 SECOND APPEAL NO. 135 OF 2021

SHRIDHAR BABURAO RITHE LRS SHANTABAI AND OTHERS
VERSUS
VILAS VISHWANATHSA KHERUDKAR

WITH CIVIL APPLICATION NO. 8157 OF 2021 IN
SA/135/2021 WITH CIVIL APPLICATION NO. 3415 OF 2021
IN SA/135/2021 WITH CIVIL APPLICATION NO. 8519 OF
2025 IN SA/135/2021

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Advocate for Appellants : Mr. Pathan Hamzakhan I.
Advocate for Respondent : Mr. Milind Patil (Beedkar).

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CORAM : SHAILESH P. BRAHME, J.
DATE : 08.09.2025

PER COURT :-

Civil Application No.8157 of 2021
with
Civil Application No.8519 of 2025

1. Heard both sides.
2. The contesting parties have filed these applications for not bringing legal heirs of appellant No.2 Kishanrao on record in time. Civil Application No.8157 of 2021 raises challenge to the maintainability of second appeal as the legal heirs of appellant No.2 Kishanrao are not brought on record either in High Court or in Lower Appellate Court.

3. Civil Application No.8519 of 2025 is for condonation of delay and bringing legal heirs of deceased appellant No.2 Kishanrao on record.

4. Respondent is the original plaintiff who was successful before the Trial Court in securing decree for Specific Performance of Contract. It was founded on agreements to sell executed by appellants, the brothers. Appellant No.2 Kishanrao died on 22.07.2014 when First Appeal No.402 of 2014 was pending in High Court. In that appeal, civil application No.2239 of 2014 was filed for bringing his legal heirs on record. Due to enhancement of jurisdiction, appeal was transmitted to District Court which was re-numbered as Regular Civil Appeal No.78 of 2017. Lower Appellate Court dismissed the appeal vide judgment and decree dated 16.01.2020 without considering civil application for bringing heirs of deceased Kishanrao on record.

5. Learned counsel for appellants Mr. Pathan submits that Civil Application No.2239 of 2014 was filed and it should have been decided by the Lower Appellate Court. Though Office has raised objection that it was barred by time but the limitation for filing civil application was expiring in the vacation and immediately after the vacation it was filed. Hence, the

objection to that effect was not proper. It is submitted that cause of action survives against legal heirs of Kishanrao. The suit property has fallen to his share which consequentially devolved upon legal heirs. It is submitted that they are necessary parties and entitled to prosecute the second appeal. It is further submitted that appeal does not get abated in the absence of deceased Kishanrao.

6. Learned counsel Mr. Milind Patil would submit that a copy of civil application which was filed in First Appeal No.402 of 2014 was never served. It is contended that it is the duty of the appellants to draw attention of the Lower Appellate Court towards the application for bringing heirs of Kishanrao on record. It is submitted that second appeal is not tenable.

7. Appellant No.2 Kishanrao is original defendant No.2. Trial Court decreed the suit on 19.12.2013. Being aggrieved First Appeal No.402 of 2014 was filed by both the defendants. Civil Application No.2239 of 2014 was filed for bringing heirs of Kishanrao on record which remained to be decided in High Court as well as in Lower Appellate court. As Civil Application was already pending, it cannot be said that there are lapses on the part of the appellants/original defendants.

8. One of the aggrieved defendants is already before this Court in the second appeal. It would be hyper technical to hold that second appeal is not maintainable at the instance of only one defendant. The legal heirs of another defendant are necessary parties. I, therefore, pass following order :

ORDER

- (i) Civil Application No.8157 of 2021 is rejected.
- (ii) Civil Application No.8519 of 2025 stands allowed in terms of prayer clauses “B” and “C”.
- (iii) List second appeal on 16.09.2025 in urgent admission category.

(SHAILESH P. BRAHME, J.)

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vmk/-