



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

**CIVIL APPLICATION NO. 2870 OF 2025
IN
SECOND APPEAL STAMP NO. 5461 OF 2025**

Mumtajbee Alisaheb Shaikh
Since deceased through L.Rs.
Ayub Alisaheb Shaikh and others .. Applicants

Versus

Ismail Miyalal Shaikh .. Respondent

Shri Ranjit D. Gaikwad, Advocate for the Applicants.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 24TH JUNE, 2025.**

FINAL ORDER :

. Heard Mr. Gaikwad, learned counsel for the applicants. Learned advocate for the respondent Mr. A. R. Mule is absent, who is appearing on caveat.

2. It is contended by the applicant that Mumtajbee Alisaheb Shaikh was the defendant in R.C.S. No. 594 of 2011, in a suit filed by the respondent. It was dismissed vide judgment and decree dated 26.02.2018. Being aggrieved, the respondent had preferred R.C.A. No. 57 of 2018. Applicant/original defendant was already party in appeal. She died on 18th December, 2022. However, respondent did not take steps to bring present applicants as heirs. Appeal was allowed vide judgment and

decree dated 13.11.2024. It is submitted that judgment and decree of the lower Appellate Court is against a dead person. No sooner that the applicant learnt about the decree passed by the lower appellate Court, he approached this Court by filing present application seeking leave to file second appeal. The learned counsel submits that they want to prosecute this appeal sincerely as their proprietary rights are at stake.

3. There is no contest to the present application. It is apparent that the applicant Mumtajbee was defendant in the Trial Court and she was respondent in the Appellate Court. I find that there are lapses on the part of both the parties in the lower Appellate Court. There is no reason to discard that right to sue survives against present applicant.

4. For the reasons stated in the application, I find that the pragmatic approach would be to allow the application and to permit the applicant to prosecute second appeal. The civil application is allowed in terms of prayer clause 'B'. The civil application is disposed of.

[SHAILESH P. BRAHME J.]

bsb/June 25