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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 260 OF 1989
WITH
INTERIM APPLICATION NO. 26 OF 2025**

Veerpakshappa Sangappa Wale and Others ... Appellants

Vs.

Shivshankar Sangappa Wale and Others ... Respondents

Mr. Niranjan Shimpi for the Appellants.

Mr. Drupad S. Patil a/w. Ms. Srushti Chalke for the Respondent

No.1.

CORAM : GAURI GODSE, J.

DATE : 16th JANUARY 2025

ORDER :

1. Heard the learned counsel for the parties in the First Appeal and judgment is reserved.
2. The second appeal arises out of partition decree dated 30th January 1984, passed in Regular Civil Suit No. 30 of 1981. This second appeal was earlier dismissed on 23rd August 2018. The second appeal was restored by order dated 18th March 2024 passed in Civil Application (St) No. 24494 of 2018.
3. Learned counsel for respondent no. 1 i.e. original plaintiff submits that respondent no. 1 expired in the year 1990 i.e. during

the pendency of this second appeal. He submits that the appellants had filed Civil Application No. 1122 of 2014 to bring on record the names of heirs and legal representatives of deceased respondent no. 1. He further submits that by order dated 2nd April 2016, the application was disposed of as withdrawn with a clarification that if any information is found regarding respondent no.1, the appellants were granted liberty to file a fresh application.

4. Learned counsel for respondent no. 1 submits that inspite of liberty granted on 2nd April 2016 till date no fresh application has been filed on behalf of the appellants regarding respondent no. 1. He submits that the application for bringing on record heirs and legal representatives of deceased respondent no. 1 is withdrawn on 2nd April 2016. He submits that since till date no further application has been filed, the abatement of the second appeal be recorded and the second appeal be dismissed as abated.

5. Admittedly there is no fresh application filed pursuant to the liberty granted on 2nd April 2016. Hence, in view of death of respondent no. 1 in whose favour there is a decree for partition and separate possession, nothing would survive in the second appeal. So far as respondent nos. 2 and 3 are concerned they are original defendant nos. 6 and 7. The decree for partition and separate

possession passed by the trial court was challenged by all the defendants. The first appeal preferred by respondent nos. 2 and 3 alongwith the present appellants was dismissed on 16th August 1988. The respondent nos. 2 and 3 have not further challenged the decree. Though served, respondent nos. 2 and 3 never appeared in the second appeal. In the meantime respondent no. 3 has expired.

6. Interim Application No. 26 of 2025 is filed to bring on record names of heirs and legal representatives of deceased respondent no. 3, who is original defendant no. 7 in the suit for partition. However, there is delay in filing the application for bringing on record names of heirs and legal representatives of respondent no.3. I see no reason to issue notice to the heirs and legal representatives of respondent no. 3, as respondent no. 3, though served, never appeared in the second appeal. The decree for partition and separate possession in favour of respondent no. 1 is dated 30th January 1984 which is confirmed on 16th August 1988. The second appeal is of the year 1989. The second appeal was initially dismissed on two occasions and restored at the request of the appellants. A perusal of the reasons stated in Interim Application No. 26 of 2025 are not sufficient to condone the delay of almost two

years. The application is bereft of any explanation for the delay. There is no ground raised for condonation of delay. Hence, Interim Application No. 26 of 2025 is dismissed.

7. In view of abatement of the second appeal against respondent nos. 1 and 3, the entire second appeal would abate. Hence, the second appeal is dismissed as abated.

[GAURI GODSE, J.]