

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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NANDIWADEKAR

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INTERIM APPLICATION NO. 9018 OF 2025

**IN
FIRST APPEAL NO.2477 OF 2011**

M/s. Yash Shree Realtors,)
A partnership firm, having its office at)
A/3, Vijay, Opp. Om Sai Honda Showroom,)
Link Road, Malad (West), Mumbai-400 064.) ...Applicant

In the matter of

Sitabai Naik, residing near Gatuam)
Chemical, Western Express Highway,)
Goregaon (East), Bombay-400 063.)
(since deceased))
1. Smt. Lila Nagin Naik,)
2. Smt. Tara Omprakash Rathod,)
3. Smt. Sumitra Nagin Naik,)
4. Babu Keshav Bhiamare, a Minor,)
5. Kumari Kalpana Nagin, a Minor)
(being minor through her mother)
Smt. Leela Nagin Naik))
6. Deepak Omprakash Rathod, a Minor)
7. Chetali Omprakash Rathod, a Minor)
8. Vaishali Omprakash Rathod, a Minor)
(Defendant Nos.6 to 8 being the Minors)
by their Mother & Natural Guardian)
Smt. Tara Omprakash Rathod)
all residing at Sitabai Chawl,)
Jaiprakash Nagar Road No.2,)
New Sweeta Studio, Goregaon (East),) ...Appellants
Mumbai-400 063.) (Original Defendants)

VERSUS

1. Kannaiyalal Purshottamdas Shah)
2. Purshottam Gokuldas Shah,)
3. Jayantilal Purshottamdas Shah)
4. Rameshchandra Purshottamdas Shah)

5. Balkrishna Purshottamdas Shah,)
6. Gopaldas Purshottamdas Shah)
7. Rashmikant Purshottamdas Shah)
8. Smt. Laxmibai Jayantital Shah)
9. Smt. Vasantibai Jayantilal Shah)
10. Smt. Chandrabala Rameshchandra Shah)
11. Smt. Usha Kannaiyalal Shah)

all residing at 5/2, Puspa Vatika Azad Nagar Society,)
 N.S.Road No.1 Juhu-Vile Parle, Scheme,)
 Vile Parle (West), Mumbai.)

12. Sukhram Triloki, Varma,)
- Rooms No.1 & 2 (since deceased))

- 12a. Govind Varma)
- 12b. Arvind Varma)
- 12c. Santosh Varma)

All heirs and legal representatives of)
 Mr. Sukhram Triloki Verma)
 Defendant No.1, Near Gautam Chemicals)
 I.B. Patel Road, Goregaon (E),)
 Mumbai-400 063.)

13. Govind Sukhram Varma)
14. Ramesh Singh Thakur)
15. Buchunu Yadav)
16. Damodar Murti Kusuma)
17. Gulshan Amir Gilani)

18. Badri Prasad Sharma)

- 18a. Smt.Jankidevi Sharma)
- 18b. Anil Sharma)
- 18c. Subodh Sharma)
- 19d. Sunil Sharma)

All heirs and legal representatives of)
 Shri. Badri Parasad Sharma,)
 Defendant No.15, all residing at Sitabai Chawl No.1,))

Near Gautam Chemicals, I.B. Patel Road,)
Goregaon (E), Mumbai-400 063.)

20. Satyanarayan Murti)
21. Agya Ram Sharma)
22. Balu Karambele)
23. Shivaji Baban Ghatkar)
24. Subhash Tukaram Bhestekar)
25. Mahendra Kumar Yadav)
26. Nirmala Dinesh Thakur)
27. Ram Sukhai Pal)

all residing at Sitabai Chawl No.1)
Near Gautam Chemicals,)
Mumbai-400 063.)

28. Seema Mangesh Gavas)
29. Shankar Narayan Gavas)

All residing at Sitabai Chawl No.2,)
Near Gautam Chemicals,)
Mumbai-400 063.)
(since deceased))

29a. Swapnil Gavas)
Heir and legal representatives of)
deceased Defendant No. 25,)
Shankar Narayan Gavas)Respondents
all residing at Sitabai Chawl No.1,) Resp. nos.1 to 11 are
Near Gautam Chemicals, I.B. Patel Road,) original plaintiffs &
Goregaon, (East), Mumbai-400 063.) Respondent nos.12 to
29a are the original
defendant nos.9 to 25a

Mr. Satyavan N. Vaishnav a/w. Ms. Nupur J. Mukherjee i/by M/s. N. N. Vaishnawa & Co. for Applicants and for respondent nos.1 to 11 in Interim Application No.9018 of 2025.

Mr. Pradyumna Agrawal a/w Mr. Anshu Agrawal, Mr. Ankit Rathod and Mr. Ishan Agrawal i/by Pushpa Ganediwala & Co. for the appellants in FA/2477/11.

CORAM : JITENDRA JAIN, J.

DATED : 5 March 2026

Judgment :

1. This application under order XXII Rule 10 read with Order I Rule 10 of the CPC, 1908 is made by the applicant-M/s. Yash Shree Realtors (for short “YSR”) praying for deletion of respondent nos.1 to 11 in the appeal and impleadment of the applicant as respondent no.1A in the appeal.
2. I have heard Mr. Vaishnav, learned counsel for the applicant and for respondent nos.1 to 11 (original plaintiffs) and Mr. Agrawal, learned counsel for the appellants (original defendants) in First Appeal No.2477 of 2011.
3. The parties are referred by their original status in the suit except the present applicant.

BRIEF FACTS :

4. The plaintiff nos.1 to 11 filed a suit before the City Civil Court, which was numbered as Suit No. 4617 of 1974, for possession of the suit property.
5. The suit was decreed in favour of the plaintiffs on 7 September 2011 and being aggrieved by the said order, the defendants have filed the appeal in this Court in the year 2011, in which the present application is taken out by the applicant-YSR.
6. When the suit was pending from the year 1974 till the year 2011,

there were transfer of right, title and interest either by operation of law or by various registered deeds.

7. In the year 1981, plaintiff no.2 expired. However, his widow and sons were already on record as plaintiffs except two daughters. In the year 1995, the said widow also expired and her sons were already on record except her two daughters.

8. In the year 2009, the daughters of plaintiff no.2 (who died in 1981) by registered deed released their rights in suit property in favour of plaintiff no.1.

9. In the year 2008, plaintiff no.9 expired and in the year 2009, her children transferred their right, title and interest by release deed in favour of plaintiff no.3. In the year 2009, plaintiff no.3, in turn, released these very rights by a registered deed in favour of plaintiff no.1. In the year 2009, plaintiff no.6 also released his right, title and interest by a registered deed in favour of plaintiff no.1 and similarly, in the year 2010, plaintiff no.7 released his rights by a registered deed in favour of plaintiff no.1. In May 2011, plaintiff nos. 4, 5, 10 and 11 sold and conveyed their respective shares to M/s. Yash Infrastructures.

10. Though M/s. Yash Infrastructures came into picture in May 2011, they were not impleaded in the suit and the suit came to be decreed in

September 2011 which is within 4 months of M/s. Yash Infrastructure coming into the picture.

11. On 10 September 2012, i.e., almost after 1 year from the date of the decree, M/s. Yash Infrastructures and plaintiff no.1 by a registered conveyance deed sold their rights in favour of the present applicant-YSR. It is important to note at this stage that YSR is a partnership firm consisting of some of the original plaintiffs.

12. Consequent to the above by virtue of various above documents, the applicant-YSR acquired all the right, title and interest in the suit property and became sole owners. However, till the present application was filed on 13 March 2025, the applicant-YSR did not take any action to be impleaded in the present proceedings. The present application for impleadment is filed after almost 14 years from the suit being decreed and the appeal being filed.

SUBMISSIONS OF THE APPLICANT - YSR :

13. Mr. Vaishnav, learned counsel for the applicant submits that the provisions of Order XXII Rules 3 and 4 of the Code of Civil Procedure, 1908 (CPC) are not applicable to the present case, because it is not a case of impleadment on account of death but it is a case of seeking impleadment by devolution of interest. He further submits that there is no time limit

provided under Order XXII Rule 10 and Section 146 of the CPC and therefore, the question of limitation would not arise. He further submits that if the application is not allowed, then it would be a case leading to abatement, which cannot be done in the present case, since it is not a case of death. He further submits by relying on paragraphs 13 to 17 of the said interim application that since the suit and the appeal was being contested by the original plaintiff no.1, who also happens to be partner of the applicant-YSR and some of the partners of YSR were also the original plaintiffs, they were under a bonafide belief that since the firm is an alter ego of the original plaintiffs and their family members, there is no need for making any application for the applicant-YSR to be impleaded. He further submitted that it was only when the original defendants sought the status of the respondent nos. 1 to 11 by letter dated 17 February 2025 that the original plaintiffs contacted the advocate, at which point of time, the fact of bringing legal representative of some of the deceased to be brought on record came to light, and further on legal advice the need for the present applicant-YSR to be brought on record was felt necessary. He therefore, submitted that the present application be allowed.

14. For the above propositions, he relied upon following decisions :-

1. Smt. Saila Bala Dassi v. Smt. Nirmala Sundari Dassi & Anr.¹,

¹ 1958 SCC OnLine SC 140

2. **Raj Kumar v. Sardari Lal & Ors.**²,
3. **Amit Kumar Shaw & Anr v. Farida Khatoon & Anr.**³,
4. **Chandra Bai (Dead) Thr. Lrs. v. Khandalwal Vipra Vidyalaya Samiti & Ors.**⁴,
5. **Shri Rikhu Dev, Chela Bawa Harjug Dass v. Som Dass (Deceased) Through His Chela Shiam Dass**⁵,
6. **Ghafoor Ahmad Khan v. Bashir Ahmad Khan (Dead) Thr. Lrs.**⁶.

SUBMISSION OF ORIGINAL DEFENDANTS (APPELLANT) :

15. Per contra, Mr. Agrawal, learned counsel for the original defendants/appellant in the appeal relied upon affidavit-in-reply affirmed on 30 June 2025 and submitted that there has been a gross delay and collusion amongst the applicant and the original plaintiffs. He further submitted that the applicant and the original plaintiffs have prosecuted the suit fraudulently by not disclosing this fact to the trial Court. He also submitted that the suit abates since YSR has not been made a party.

16. Mr. Agrawal further submitted that if the present application is allowed and some of the original plaintiffs challenges the existence of the applicant and its impleadment, then it would lead to multiplicity of proceedings which should be avoided by rejecting this application. Mr. Agrawal further submitted that if registered conveyance deed is in favour of

2 (2004) 2 SCC 601
3 (2005) 11 SCC 403
4 (2016) 12 SCC 534
5 (1976) 1 SCC 103
6 (1982) 3 SCC 486

the applicant-YSR, then the fruits of the present appeal and the decree can very well be prosecuted by the original plaintiffs as trustees of YSR and there is no need for YSR to be impleaded in the present proceedings.

17. Other than what is recorded above, no other argument has been advanced by both the parties and this order is dictated in the open Court including the submissions made by both the parties.

18. I now propose to analyse the submissions made by the parties.

ANALYSIS :

Issue : Whether the applicant-YSR (successor in interest) be permitted to be added under Order XXII Rule 10 read with Order I Rule 10 as respondent in appeal after long delay of 14 years ?

19. The apprehension of Mr. Agrawal, learned counsel for the defendants that if this application is allowed and subsequently some of the original plaintiffs challenge, the existence of the applicant-YSR or the impleadment can be addressed by retaining all original plaintiffs in the appeal including respondent nos.1 to 11 and by permitting the applicant-YSR to be added as a new respondent. By this process, if any of the original plaintiffs has any objection, then they can be addressed while hearing the appeal. It is also important to note that the original plaintiff nos.1 to 11 are represented today by advocate Mr. Vaishnav who also appears for applicant-YSR and

atleast these plaintiffs have not raised any objection to the existence of the firm or to the applicant-YSR being impleaded as a party. The other respondents, who are not represented today, have not objected since they have not tendered their appearance inspite of service. Therefore, the apprehension raised by Mr. Agrawal is well addressed by retaining all the plaintiffs and impleading applicant-YSR.

20. The second apprehension of Mr. Agrawal, learned counsel for the original defendants that the original plaintiffs can pursue the present appeal on behalf of the applicant since there are registered documents in favour of the applicant can also be addressed by accepting the said submission. There would be no prejudice to the defendants, if the applicant is being impleaded in the present proceedings. If the submission of Mr. Agrawal is to be accepted and which I accept, then there would be no prejudice if the applicant-YSR is impleaded in the present proceedings. Therefore, to meet the ends of justice, the original plaintiffs can be retained on the basis of the submission made by Mr. Agrawal and the registered documents in favour of the applicant, the applicant can also be permitted to be impleaded as a party respondent in the present appeal.

21. Insofar as the submission relating to abatement is concerned, the contention of Mr. Agrawal cannot be accepted because the present case is a

case of devolution of interest and not a case of death since the provisions relating to Order XXII Rule 3 and Rule 4 which provides for abatement in case of death is not applicable to the present case, since it is a case of devolution of interest. The Hon'ble Supreme Court in the case of ***Ghafoor Ahmad Khan (supra)*** has observed that question of abatement does not apply to the case of devolution of interest since it is not a case of death. Therefore, this contention of Mr. Agrawal cannot be accepted.

22. The defendants have alleged fraud and collusion in their reply to oppose the present application. It is settled position that merely using the word "fraud" or "collusion" cannot bring the case within the said phrase. The party who alleges "fraud" and "collusion" has to specifically plead and show how the collusion and fraudulent acts have resulted into the decree being obtained by such acts. In the reply, there is no such averments as to how the collusion and fraudulent acts alleged deprives the original plaintiffs and the applicant from the fruits of the decree. Therefore, even this submission cannot be accepted. The transferee to pending litigation takes all the pros and cons of the litigation. The devolution of interest in favour of the applicant YSR accrued after the suit was decreed and therefore no fraud can be alleged against applicant in obtaining decree by non disclosing the same to the trial Court.

23. The next submission is with respect to the delay. In the reply, it is stated that there is a delay of 40 years. How this 40 years has been calculated has not been stated in the reply. The delay if at all is from 2012 to 2025, which is about 14 years and not 40 years. The present application is made by the applicant-YSR on the basis of a registered document dated 10 September 2012 and 7 May 2011 and therefore, for the purpose of delay, it is 2011/2012, which has to be considered and not the dates when some of the original plaintiffs expired and/or when the suit was filed.

24. The reasons for the delay has been explained by the applicant in paragraphs 13 to 17 of the present interim application which reads as under :-

“13. The Applicants state that as the present Appeal was mainly contested by the Plaintiff No. 1, being the Respondent No. 1 herein, who is also a partner of the Applicants. He under bonafide belief that he is a party to the present Appeal and also partner of M/s. Yash Shree Realtors through bonafide error and genuine mistake on his part failed to bring all the aforesaid subsequent events to the notice of this Hon'ble Court and missed to take out appropriate application in this Hon'ble Court and continued to defend the above proceeding under the aforesaid mistaken belief. The Applicant states that the Respondent No. 1 is presently aged 93 years and it seems due to his age, he may have genuinely missed to do so. He has been diligently attending this Hon'ble Court and also in the capacity as a partner and hence probably he missed about it.

14. The contesting Respondents received letter dated 17th February , 2025 sent by the Advocate for the Appellants in First Appeal No. 2477 of 2011 wherein he asked about the present status of all the Respondents. Hereto annexed and marked Exhibit 'K' is the copy of the said letter dated 17th February, 2025 sent by the Advocate for the Appellants. It is only upon receipt of the said letter that it was investigated about the present status of the Respondent Nos. 1 to 11, when it realized that either they have expired and/or prior to their demise, they have released/transferred / conveyed their rights in the suit property and presently all rights in the suit property has

devolved upon the Applicants herein by diverse registered documents. The said letter was replied by letter dated 27th February 2025 pointing out the aforesaid facts. The Applicants crave leave to refer to and rely upon the said letter when produced.

15. The Applicants state that there is no attempt to conceal any fact. It is only due to bonafide error, mistaken belief and lapse also possibly due to the age of the Respondent No. 1 that the aforesaid lapses have occurred.

16. The Applicants state that in view of the facts as stated hereinabove, the rights of all the Original Plaintiffs to the suit have devolved, transferred, assigned or conveyed in favour of the Applicants and as such, the Applicants be permitted to be joined as the Party Respondent in place of Respondent Nos. 1 to 11 in the above Appeal. I say that presently the Respondent Nos. 1 to 11 have no right, title and interest in the suit property though Respondent No. 1 and 11 and their sons are the partners of M/s. Yash Shree Realtors and hence they shall be represented by the Applicants herein.

17. The Applicants state that there has been great delay on the part of the Applicants to take out the present application. The Applicants submit that the delay is due to bonafide error on the part of the Applicants' particularly their partners, the original Plaintiff No.1, who was under mistake and belief that as he is continuing the proceedings, he is personally representing the Applicants herein and he is the main active partner looking after all the interest of the Applicants. However, the delay should not defeat the rights of the Applicants as by virtue of the diverse agreements as stated hereinabove, all the rights in the suit property has devolved upon the Applicants and hence the Applicants are proper and necessary party to further contest the above Appeals. In the interest of justice, the Applicants be permitted to be added as Respondent No. 1A in place of Respondent Nos. 1 to 11 in the present Appeal.”

25. In my view, on a reading of these paragraphs, the bonafide of the applicant cannot be doubted since the applicant-YSR consist of some of the original plaintiffs and its family members and it is possible that the original plaintiffs may be under a bonafide belief that since they are prosecuting and the firm being the alter ego of the original plaintiffs, there is no need for impleadment.

26. In February 2025, when the defendants/appellants sought status of the respondents in appeal and the original plaintiffs contacted their advocate, it is at that point of time, the original plaintiffs felt the need on the advice of their lawyer to bring the fact of the death of some of the original plaintiffs and the present applicant on record. Therefore, in my view, though there is a delay of 14 years, the delay cannot smack of malafides and no advantage was obtained or is sought to be obtained by delaying the filing of the present application, but on the contrary, the moment they realized, they have taken immediate steps for impleadment.

27. The submission of learned counsel, Mr. Vaishnav, learned counsel for applicant that there is no time limit provided and therefore, an application can be made at any point of time assuming for sake of argument is not to be accepted then also it is settled position that wherever there is no limitation provided, the application should be made within a reasonable time and if there is a delay in making such an application, then the Court under Section 151 read with Section 146 of the CPC can consider the explanation for the delay for coming to the conclusion as to whether the delay should be condoned or not. The period for making application under Order XXII Rule 3 and Rule 4 read with Article 120/121 of the Limitation Act is 60/90 days and in case where no limitation is provided then under Article 137 is 3 years may be considered as reasonable period. This aspect is

being considered on demur though decisions relied upon by learned counsel for the applicant states it being continuous cause of action and in the absence of express time provided for application under Order XXII Rule 10 can be made after long delay. In the instant case, as observed by me above and as pleaded by the applicant in paragraphs 13 to 17, there appears to be a bonafide belief in the minds of the original plaintiffs looking to the fact situation that some of the original plaintiffs are family members and the applicant firm consisting of some of these original plaintiffs are also partners in applicant-YSR. The original plaintiffs are individuals and it is possible that they have formed such a belief and on realising the same, at the instance of the appellants, have taken immediate steps by filing the present application. Therefore, assuming there is a delay after reasonable period, same requires to be condoned in the facts of the present case moreso when no prejudice would be caused to the defendants and the apprehension raised by them has been addressed by me in the above paragraphs.

28. It is also important to note that no prejudice is caused to the defendants, if the applicant-YSR is made a party after a period of 14 years. In the reply, there is no such prejudice pleaded or shown. Furthermore, such prejudice which has been submitted by the learned counsel for the defendants by way of apprehension has also been addressed by me by

retaining the original plaintiffs and by impleading the present applicant-YSR as a newly added respondent. Therefore, in the absence of any prejudice being caused or shown, the opposition to application cannot be accepted.

29. Order XXII Rule 11 of the CPC provides that in the application of this order to appeals, the word “plaintiff” shall be held to include an “appellant” and the word “defendant” shall include “respondent” and the word “suit” shall include an “appeal.”. This gives judicial recognition that an application under Order XXII of the CPC can be made even at the appellate stage. This is in consonance with well settled principle that appeal is continuation of the original proceedings. Therefore present application is maintainable under Order XXII.

30. It is also settled by now that the provisions of Section 151 of the CPC dealing with inherent powers of Court has not been whittled down by Section 148 of the CPC. Furthermore, Section 148 of the CPC applies where any period is fixed or granted by the Court for doing of any act prescribed or allowed by this Code, then in that situation, there is a discretion granted in the Court to enlarge such period not exceeding thirty days in total. In the instant case, I have not been shown any period provided under the CPC for making an application to be impleaded in case

of devolution of interest and it is also well settled by catena of judgments of the Hon'ble Supreme Court that no time limit is provided for making an application under Order XXII Rule 10 of the CPC. Therefore, even on this count, the submission that there is a delay, cannot be accepted.

31. The learned counsel for the applicant-YSR is justified in relying upon the decision of **Rajkumar (supra)** and more particularly paragraphs 5 to 10 which read as under : -

“5. The doctrine of lis pendens expressed in the maxim “ut lite pendente nihil innovetur” (during a litigation nothing new should be introduced) has been statutorily incorporated in Section 52 of the Transfer of Property Act, 1882. A defendant cannot, by alienating property during the pendency of litigation, venture into depriving the successful plaintiff of the fruits of the decree. The transferee pendente lite is treated in the eye of the law as a representative-in-interest of the judgment-debtor and held bound by the decree passed against the judgment-debtor though neither has the defendant chosen to bring the transferee on record by apprising his opponent and the court of the transfer made by him nor has the transferee chosen to come on record by taking recourse to Order 22 Rule 10 CPC. In case of an assignment, creation or devolution of any interest during the pendency of any suit, Order 22 Rule 10 CPC confers a discretion on the court hearing the suit to grant leave for the person in or upon whom such interest has come to vest or devolve to be brought on record. Bringing of a lis pendens transferee on record is not as of right but in the discretion of the court. Though not brought on record the lis pendens transferee remains bound by the decree.

6. The present case has a peculiar feature. The transfer took place during the pendency of the suit but the decree passed ex parte in the suit is sought to be set aside not by the defendant on record but by a person who did not come or was not brought on record promptly and hence apparently appears to be a third party. However, as we have already stated hereinabove, the person would be a representative-in-interest of the defendant judgment-debtor.

7. The solution lies in Section 146 of the Code of Civil Procedure, 1908. It provides:

“146. Proceedings by or against representatives.—Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.”

8. A *lis pendens* transferee from the defendant, though not arrayed as a party in the suit, is still a person claiming under the defendant. The same principle of law is recognized in a different perspective by Rule 16 of Order 21 CPC which speaks of transfer or assignment *inter vivos* or by operation of law made by the plaintiff decree-holder. The transferee may apply for execution of the decree of the court which passed it and the decree will be available for execution in the same manner and subject to the same conditions as if the application were made by the decree-holder. It is interesting to note that a provision like Section 146 CPC was not to be found in the preceding Code and was for the first time incorporated in CPC of 1908. In Order 21 Rule 16 also an explanation was inserted through amendment made by Act 104 of 1976 w.e.f. 1-2-1977, whereby the operation of Section 146 CPC was allowed to prevail independent of Order 21 Rule 16 CPC.

9. A decree passed against the defendant is available for execution against the transferee or assignee of the defendant judgment-debtor and it does not make any difference whether such transfer or assignment has taken place after the passing of the decree or before the passing of the decree without notice or leave of the court.

10. The law laid down by a four-Judge Bench of this Court in **Saila Bala Dassi v. Nirmala Sundari Dassi** [AIR 1958 SC 394 : 1958 SCR 1287] is apt for resolving the issue arising for decision herein. A transferee of property from the defendant during the pendency of the suit sought himself to be brought on record at the stage of appeal. The High Court dismissed the application as it was pressed only by reference to Order 22 Rule 10 CPC and it was conceded by the applicant that, not being a person who had obtained a transfer pending appeal, he was not covered within the scope of Order 22 Rule 10. In an appeal preferred by such transferee, this Court upheld the view of the High Court that a transferee prior to the filing of the appeal could not be brought on record in appeal by reference to Order 22 Rule 10 CPC. However, the Court held that an appeal is a proceeding for the purpose of Section 146 and further, the expression "claiming under" is wide enough to include cases of devolution and assignment mentioned in Order 22 Rule 10. Whoever is entitled to be but has not been brought on record under Order 22 Rule 10 in a pending suit or proceeding would be entitled to prefer an appeal against the decree or order passed therein if his assignor could have filed such an appeal, there being no prohibition against it in the Code. A person having acquired an interest in suit property during the pendency of the suit and seeking to be brought on record at the stage of the appeal can do so by reference to Section 146 CPC which provision being a beneficent provision should be construed liberally and so as to advance justice and not in a restricted or technical sense. Their Lordships held that being a purchaser *pendente lite*, a person will be bound by the proceedings taken by the successful party in execution of decree and justice requires that such purchaser should be given an opportunity to protect his rights."

32. Similarly, the decision in case of **Chandrabai (supra)** also supports the

view which I have taken and the relevant paragraphs read as under : -

“2. Mr Puneet Jain, learned counsel appearing on behalf of the petitioners submitted that the High Court ought to have dismissed the application since the application had been filed before the Court after long delay. In support of his submissions he relied upon the following decisions of this Court : Raj Kumar v. Sardari Lal [Raj Kumar v. Sardari Lal, (2004) 2 SCC 601] ,Amit Kumar Shaw v.Farida Khatoon [Amit Kumar Shaw v. Farida Khatoon, (2005) 11 SCC 403] ,Vidur Impex & Traders (P) Ltd.v. Tosh Apartments (P) Ltd. [Vidur Impex & Traders (P) Ltd. v Tosh Apartments (P) Ltd., (2012) 8 SCC 384 : (2012) 4 SCC (Civ) 1] , Bibi Zubaida Khatoon v. Nabi Hassan Saheb [Bibi Zubaida Khatoon v. Nabi Hassan Saheb, (2004) 1 SCC 191] and Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd. [Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd., (2013) 5 SCC 397 : (2013) 3 SCC (Civ) 1]

7. Mr Sanjib Sen further contended that no period of limitation is prescribed under Order 22 Rule 10 CPC. In fact the right to apply under this Rule is a continuous right and application can therefore be made at any time till the proceedings are pending. He further contended that the question of delay/laches or setting aside abatement of suit arises only where the case falls under Order 22 Rule 3 or Rule 4 and not where the case is covered by Rule 10. According to him, it is the discretion of the Court and if the Court is prima facie satisfied with the facts so pleaded before the Court, it can allow such application.

8. We have further noticed that in Baijnath Ram v. Tunkowati Kuer [Baijnath Ram v.Tunkowati Kuer, 1962 SCC OnLine Pat 5 : AIR 1962 Pat 285] the Full Bench of the Patna High Court has held : (SCC OnLine Pat para 15)

“15....Another thing to notice in connection with this rule is that a party on whom the interest of the deceased plaintiff or defendant devolves is not entitled to continue the suit or appeal as a matter of right, it is essential to obtain the leave of the Court. The granting of leave is within the discretion of the Court. The Court, however, is to exercise its discretion judicially and according to well-established principles. Further, unlike Rules 3 and 4, no limitation is prescribed for presentation of an application under this rule and no penalty is laid down for failure to substitute the person on whom the interest of the deceased plaintiff or defendant was devolved. Therefore, the right to make an application under this rule is a right which accrues from day to day and can be made at any time during the pendency of a suit. There is no abatement under this rule.”

33. The provision of Order XXII Rule 10 came up for consideration in another case before the Hon'ble Supreme Court in case of ***Dhurandhar Prasad Singh Vs. Jai Prakash University & Ors.***⁷ and the observations made therein in para 6 relevant for the present purpose reads as under:

“6. In order to appreciate the points involved, it would be necessary to refer to the provisions of Order 22 of the Code, Rules 3 and 4 whereof prescribe procedure in case of devolution of interest on the death of a party to a suit. Under these Rules, if a party dies and right to sue survives, the court on an application made in that behalf is required to substitute legal representatives of the deceased party for proceeding with a suit but if such an application is not filed within the time prescribed by law, the suit shall abate so far as the deceased party is concerned.

Rule 7 deals with the case of creation of an interest in a husband on marriage and Rule 8 deals with the case of assignment on the insolvency of a plaintiff. Rule 10 provides for cases of assignment, creation and devolution of interest during the pendency of a suit other than those referred to in the foregoing Rules and is based on the principle that the trial of a suit cannot be brought to an end merely because the interest of a party in the subject-matter of the suit has devolved upon another during its pendency but such a suit may be continued with the leave of the court by or against the person upon whom such interest has devolved. But, if no such step is taken, the suit may be continued with the original party and the person upon whom the interest has devolved will be bound by and can have the benefit of the decree, as the case may be, unless it is shown in a properly constituted proceeding that the original party being no longer interested in the proceeding did not vigorously prosecute or colluded with the adversary resulting in decision adverse to the party upon whom the interest had devolved. The legislature while enacting Rules 3, 4 and 10 has made a clear-cut distinction. In cases covered by Rules 3 and 4, if right to sue survives and no application for bringing the legal representatives of a deceased party is filed within the time prescribed, there is automatic abatement of the suit and procedure has been prescribed for setting aside abatement under Rule 9 on the grounds postulated therein. In cases covered by Rule 10, the legislature has not prescribed any such procedure in the event of failure to apply for leave of the court to continue the proceeding by or against the person upon whom interest has devolved during the pendency of a suit which shows that the legislature was conscious of this eventuality and yet has not prescribed that failure would entail dismissal of the suit as it was intended that the proceeding would continue by or against the original party although he ceased to have any interest in the subject of dispute in the event of failure to apply for leave to continue by or against the person upon whom the interest has devolved for bringing him on

7 (2001) 6 Supreme Court Cases 534

the record.”

34. In my view, if the transferee takes a property with all liabilities from the transferor during pending litigation, certainly it cannot be accepted that the transferee cannot defend the decree which is in favour of its predecessor-in-title. The submission of the defendants, if accepted, would result in a case where a decree in favour of the plaintiff/transferor is sought to be put at naught by the defendant. If there would have been any liability pending litigation, then the transferee would be liable. Accepting the same logic, if the decree is in favour of plaintiff then the benefit of the same accrues in favour of the transferee. By not allowing the present application, the interest of the applicant-YSR would be seriously affected and, therefore, the applicant-YSR is a necessary party for defending the decree and for adjudication of the present appeal. It is also important to note that conveyance deed in favour of the applicant-YSR is of September 2012 and the suit was decreed in September 2011, therefore, insofar as the applicant-YSR is concerned, they were not in the picture when the suit was decreed.

35. However, though there is no prejudice and the apprehension if any has been addressed by me, there has been admittedly a delay of 14 years and the defendants can be compensated by imposing cost on the present applicant- YSR. Therefore, cost of Rs.50,000/- is imposed, which is to be

paid by the applicant to the defendants within two weeks from date of uploading of present judgment. The cheque/amount should be transferred in favour of the advocate who will give bank details to the advocate of the present applicant and the advocate for the defendants would, in turn, distribute the cost amongst various defendants as per the written instructions of their clients. In addition to above, the partner of the applicant-YSR who is present has also volunteered to donate within two weeks a sum of Rs.1.5 lakh to following Trust, though the Court had suggested non-jain trust :-

Trust Name : Padmamani Jain Shwetambar Thirth Pedhi
Branch Name : Pabal
C. A. No. : 60103465883
IFSC Code : MAHB0000173
Mobile No. : 7414922152
E-mail ID : spjstp@gmail.com

Conclusions:

36. Therefore viewed from any angle in the absence of any limitation period in making present application and it being continuous cause of action and assuming it has to be filed within reasonable period and in case of delay explained sufficiently and there being no prejudice caused to defendant and the applicant is a necessary party by devolution of interest and apprehension of defendants having addressed by retaining all the original plaintiffs and by impleading applicant-YSR as newly added respondent, the application is allowed in above terms. Amendment to be

carried out within 4 weeks in all the copies of all the parties.

37. Interim application is disposed of.

(JITENDRA JAIN, J.)