

CASE NO.:
Appeal (civil) 2029 of 2008

PETITIONER:
SUJABEN MANUBHAI SOLANKI AND ORS

RESPONDENT:
SHIVSANGBHAI PURSANGBHAI SOLANKI & ORS

DATE OF JUDGMENT: 14/03/2008

BENCH:
P.P. Naolekar & Lokeshwar Singh Panta

JUDGMENT:
JUDGMENT

O R D E R

CIVIL APPEAL NO.2029 OF 2008
(Arising out of SLP) No.19547 of 2006)

1. Leave granted.

2. In a partition suit filed by the respondents herein in the year 1987, a decree was passed in favour of the respondents on 20.11.1992. Aggrieved by the impugned judgment and order the father of the present appellants preferred a regular appeal in the High Court on 22.02.1993. He was the sole appellant. On 06.07.2002, the father of the appellants died when the matter was pending consideration before the High Court. This fact was brought to the notice of the High Court by the counsel for the respondents, and the High Court dismissed the First Appeal on 19.01.2005 as abated.

3. An application was filed by the legal representatives of the deceased appellant on 01.05.2006 before the High Court setting aside abatement and bringing them on record along with an application for condonation of delay which was dismissed by the High Court. Hence the present appeal.

4. It appears that the appeal was pending consideration before the High Court since 1993 and the deceased was the sole appellant before the High Court. It also appears that the legal representatives were not aware of the pendency of the appeal before the High Court and, therefore, they could not take steps for bringing them on record in the First Appeal within the stipulated time. We also notice that the appeal is arising out of a partition suit where both the parties are in the capacity of plaintiff as well as defendants. Normally, the courts always lean towards the decision of the matter between the parties on merits and thus the sufficient cause to receive liberal construction so as to advance substantial justice.

5. Taking an overall view of the facts into consideration and the fact that normally the parties should be given a liberty to contest the matter on merits unless there is a gross callous negligence or deliberate inaction with the parties to protect trial, we are of the view that the interest of justice would be sub-served if the legal representatives are brought on record and the First Appeal No.1233 of 1993 is restored to its original number by setting aside abatement.

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We order accordingly. The High Court will issue fresh notices to the respondents in First Appeal indicating the date of hearing of the matter. Keeping in view the fact that the matter

is pending for a long time we would request the High Court to consider the desirability of disposing of the matter as expeditiously as possible, preferably within a period of 8 months

from the date of receipt of the order.

6. This appeal stands disposed of.

JUDIS