

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

**CIVIL APPLICATION NO. 18470 OF 2010
IN
SECOND APPEAL NO. 498 OF 2003**

Smt. Hirabai w/o Mhasappa Dnyane ... Applicant

Versus

Narayan @ Anna Mhasappa Dnyane
& others ... Respondents

.....
Mr. V.S. Bedre , Advocate for Applicant
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CORAM : RAVINDRA V. GHUGE, J.

DATED : 26th MARCH, 2015

PER COURT :

1. The applicant by this application prays for condonation of fourteen years delay in filing the Civil Application for bringing the legal heirs of respondent No. 12- Sau.Uttara on record.

2. Sau.Uttara-respondent No. 12 in the Second Appeal has passed away on 11-02-1996. Special Civil Suit No. 128 of 1983 indicates that Sau.Uttara was defendant No. 12 in the suit for partition and separate possession. The Trial Court dismissed the suit vide its judgment dated 25-04-1990.

3. The applicant herein preferred R.C.A. No. 41 of 2001 which has been dismissed by judgment dated 09-12-2001. Sau. Uttara is the daughter of Mhasappa Dnyane, who is husband of the applicant-Hirabai. From the record of the Appeal Court it does not appear that the death of Sau. Uttara on 11-02-1996 was brought to the notice of the Court.

4. The address of the applicant is shown in the cause title which indicates that she is residing in Nashik city. Deceased Sau. Uttara- respondent No. 12 is shown to be residing at Peth, Taluka and District Nashik.

5. The applicant contends that after this Court issued notice to the respondents, the notice was returned unserved as against respondent No. 12 on the ground that she had passed away on 11-02-1996. That is how the applicant got the knowledge of the demise of respondent No.12.

6. It is stated that Sau. Uttara was the daughter of Mhasappa's first wife Godawari and the applicant who is the second wife of Mhasappa Dnyane, was not aware that Sau. Uttara has passed away fourteen years ago.

7. Having considered the submissions of the learned Advocate for the applicant and in the light of the above, it is evident that the applicant is the step mother of Sau. Uttara. The litigating sides are apparently close relatives as is evident from the fact that the suit was for partition and separate possession of the ancestral property.

8. Taking into account the above facts, I am unable to accept the contention of the applicant that she did not know that her step daughter had passed away fourteen years ago. I do not find that the reasons assigned deserve to be accepted. Delay of fourteen years in preferring this application for bringing the legal representatives of respondent No. 12- Sau. Uttara on record, therefore, does not deserve to be condoned.

9. In the light of the above, this Civil Application is rejected.

(**RAVINDRA V. GHUGE, J.**)