

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

**CIVIL APPLICATION NO. 1964 OF 2015
IN
SECOND APPEAL NO. 52 OF 2015**

Smt. Vastalabai w/o Eknath Paithane ... Applicant

Versus

Laxmibai w/o Maruti Salve & others ... Respondents

.....
Mr. S.K. Rahane, Advocate for Applicant

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 27th MARCH, 2015

PER COURT :

1. I have heard Shri Rahane, learned Advocate for the applicant for quite some time.

2. The appellant was defendant No. 8 in RCS No. 37 of 2001 before the Trial Court. The Plaintiff -Nathu Bhagaji had filed a suit against eight defendants seeking partition, separate possession and declaration. Defendant No. 8 had purchased a portion of plot No. 384 from defendant No. 1- Bhimrao @ Bhimaji Bhagaji who is the real brother of the plaintiff.

3. The operative part of the judgment of the Trial Court dated 07-11-2003 reads as under :-

ORDER

1. Counter claim is decreed with costs.
 2. It is hereby declared that, defendant Nos. 3 to 6 have 9/20th share jointly, plaintiff and defendant No. 1 have 9/20 share each. Defendant Nos. 2 & 7 have 1/20th share each.
 3. Decree in regard to partition and separate possession of landed property gut No. 219 be sent to Collector vide Sec. 54 of C.P.C. The Collector shall effect partition and separate possession personally or through his subordinate appointed on his behalf.
 4. In regard to partition and separate possession, of house properties, commissioner be appointed for effecting partition and separate possession.
 5. Sale transaction in between defendant Nos. 1 & 8 is not binding on the share of defendant Nos. 3 to 6, but at the same time sale transaction be safeguarded if possible by allotting share of defendant No. 1 in the house of defendant No. 8.
 6. Decree be drawn up accordingly.
4. None of the other litigating sides are said to have preferred any appeal. The appellant has filed the First Appeal along with an application for condonation of delay on 12-02-2009 after delay of more than five years.
5. Contention of the appellant before the Appeal Court was that defendant No. 1-Bhimrao @ Bhimaji s/o Bhagaji was

negotiating with the appellant as regards the effect of clause 5 of the judgment and order dated 07-11-2003. On account of such negotiations, the appellant did not prefer a First Appeal. It was further stated that because the defendant No. 1 finally refused to settle the matter, the appellant had filed the appeal which was delayed.

6. The Appeal Court has considered the contentions of the appellant who claimed that she has an illiterate lady. However, the record revealed that the appellant was accompanied by her husband in the entire journey of litigation and who is an educated person having acquired degrees of M.A.B.Ed. The appellant had also appeared in the execution proceedings R.D. No. 4 of 2007 in 2007 itself. Bailiff had approached the appellant on 01-02-2007 for taking possession of the suit property and the appellant had obstructed him and locked the premises and left the spot.

7. It has also come on record that there were no efforts of compromise made and the explanation for seeking condonation of delay set out by the appellant was baseless and unsubstantiated. She finally went to the extent of accusing her Advocate and submitted that her Advocate had misguided her. However, no instances of deficient service or the name of the Advocate was

ever disclosed before the Appeal Court, much less as to whether she had initiated any action against him.

8. The Appellant has relied upon the judgment of this Court in the matter of *Sonerao Sadashivrao Patil and another Vs. Godawaribai w/o Laxmansingh Gahirewar*, 1999 (2) Mh.L.J. 272. This Court had noted that the duration of delay is insignificant after acceptable explanation is put forth.

9. In the *Sonerao's* case (supra), the suit was decided ex-parte on 14-10-1986 and the appellant had preferred an application for condonation of delay of 104 days in filing the appeal. The learned Additional District Judge, Latur rejected the condonation of delay application and declined to condone 104 days delay.

10. In the instant case, the delay is of more than five years. Unsubstantiated explanation is that the appellant tried to settle the matter with defendant No. 1. Allegations against the Advocate were found to be unsubstantiated. This tendency to accuse an Advocate for self-serving purpose, needs to be deprecated.

11. In the light of the above, I do not find that any substantial question of law is involved in the Second Appeal. For the above

reasons, the Second Appeal is dismissed. Consequentially, the Civil Application does not survive and is also disposed off.

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