

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal Stamp No.31372 of 2012

(Bajirao Subhedar Nalawade, since deceased, through L.R. Dada Bajirao Nalawade, since deceased, through L.Rs. Shri Ravindra Dadasaheb Nalawade and others v. Nanasaheb Subhedar Nalawade, since deceased, through L.Rs. Shri Vijay Nanasaheb Nalawade and others)

with

Civil Application No.2199 of 2012

In

Second Appeal Stamp No.31372 of 2012

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri Jitendra Gaikwad I/b Shri Anilkumar Patil, Advocates for Appellants.

Shri Dilip Bodake, Advocate for Respondent Nos.1(A) and 2(A).

Coram : R.K. Deshpande, J.

Dated : 28th July, 2015

1. This second appeal is filed by the original defendant Nos.1 and 2 along with Civil Application No.2199 of 2012 for condonation of delay of 1 year and 174 days caused in filing the appeal. The notices on civil application for condonation of delay were issued and the matter is dismissed against the respondent No.2(B) on 28-10-2013 by the order of the Registrar (Judicial) for failure to take steps to serve the said respondent. It is also dismissed against the respondent No.3, who was the original defendant No.3, on 8-7-2013 as abated. Civil Application

No.361 of 2014 for bringing the legal representatives of the defendant No.3 on record was rejected by this Court by a speaking order dated 12-11-2014. Similarly, the appeal is dismissed against the respondent No.5, who is the original defendant No.6, as abated, and the application for bringing his legal representatives on record was also rejected by this Court by a speaking order dated 12-11-2014. The decree is passed by the Trial Court in favour of the plaintiff and the defendant Nos.1 and 5, holding that they have 1/3rd share in the suit property. Once it is held that the appeal is dismissed against one of the legal representatives of the original defendant No.5, who is the respondent No.2(B) in this second appeal, the appeal shall stand abated in its entirety.

2. The learned counsel for the appellants seeks time to take steps to get the dismissal of appeal against the respondent No.2(B) set aside. The appeal was dismissed against the respondent No.2(B) on 28-10-2013. Till this date, no steps are taken.

3. I have heard the learned counsels appearing for the parties on the merits of the matter also. The second appeal is against the concurrent findings of fact recorded by both the Courts below in passing a decree for partition and separate possession. The defendant No.1 is held entitled to 1/3rd share in the suit property. The learned counsel for the defendant No.1 submits that the suit property was his self-acquired property. He has invited my attention to para 6 of the judgment delivered by the Trial Court in which it is held that "It is also admitted position that the name of defendant No.1 was entered in revenue record of Gat No.499 of village Vetane as per his sale-deed". The admitted position, as is stated in the judgment, does not advance the case of the appellant/defendant No.1. The sale-deed in respect of the suit properties are produced on record to show that they are in the name of the defendant No.5. It was not the issue framed by the

Trial Court as to whether the defendant No.1 proves that the suit properties are his self-acquired properties. I have gone through the memo of appeal before the lower Appellate Court, which does not contain a ground that the Trial Court ought to have framed such an issue and that the suit properties were self-acquired properties of the defendant No.1.

4. In view of this, I do not find that any substantial question of law arises for consideration in this second appeal. Hence, the civil application is dismissed along with the second appeal.

Judge.

Lanjewar