

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.815 of 2010

In

Second Appeal Stamp No.14328 of 2010

(Phulabai Nivruti Pangare v. Yamunabai @ Vimal Namdeo Pangare and
others)

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

Shri Mahsh Rawool i/b Shri P.B. Shah, Advocates for
Applicant/Appellant.

Coram : R.K. Deshpande, J.

Dated : 23rd June, 2015

The Trial Court decreed the suit of the plaintiff for partition and separate possession, and the plaintiff is held entitled to half share from the properties, which are found to be the ancestral properties. The plaintiff also claimed the relief of declaration that the gift-deed dated 17-1-1972, said to have been executed by Tukaram, the common ancestor, in favour of the respondent Nos.2 and 3, viz. Vittal and Sopan respectively, is not binding upon him, as the properties covered by the gift-deed were also the ancestral properties. The Trial Court rejected this claim for setting aside the gift-deed on the ground that the suit claiming such relief was barred by limitation. The Appellate Court has considered this aspect in para 40 of its judgment and it is held that the right from the year 1972 till the date of filing of the suit, the plaintiff did not make any grievance in respect of such gift-deed. It is further held that the gift-deed at Exhibit 86 in favour of Vittal and Sopan by Tukaram was in respect of the self-acquired properties. This judgment delivered on 19-9-2001 grants half share to the plaintiff

in the properties, which are found to be ancestral. This second appeal is preferred with the delay of 8 years and 25 days caused in filing the appeal.

It is urged by the learned counsel for the applicant/appellant that another Second Appeal No.408 of 2001 filed by the respondents challenging the decision of the lower Appellate Court granting half share to the present appellant has already been admitted by framing the substantial question of law. He, therefore, submits that this second appeal is also required to be admitted and heard along with the earlier second appeal.

With the assistance of the learned counsel for the applicant/appellant, I have gone through the application for condonation of delay. The reason given in the application is that the applicant/appellant is an old lady and having poor financial condition, and, therefore, the suit was not preferred within a period of limitation. I do not find such a ground to constitute a sufficient cause to condone the delay of 8 years and 25 days in filing the appeal. Merely because another second appeal is admitted, this appeal cannot be admitted unless a sufficient cause is made out.

Consequently, the civil application is dismissed.

Judge.

Lanjewar