

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

CIVIL APPLICATION NO. 5255 OF 2014
WITH
CIVIL APPLICATION NO. 5256 OF 2014
IN
SECOND APPEAL [STAMP] NO. 3941 OF 2014

Chandar Dashrath Khandekar, died,
through legal representative :-
appellant no. 2 :

Anil s/o Chandar Khandekar and ors .. Applicants

vs

Shevantabai alleged wd/o Chandar
Khandekar

.. Respondent

Mr. Hanmant V. Patil, Advocate for applicants
Mr. U.B. Bilolikar, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.
DATE : 26th August, 2016

ORDER :

1. Heard learned counsel for parties.
2. This is defendants-judgment debtors' delay condonation application in filing second appeal against the judgment and decree passed by the appellate court on 04-01-2003 in regular civil appeal No. 80 of 1996 maintaining judgment and decree passed by Civil Judge, Junior Division, Degoor on 16-04-1996 in regular civil suit no. 87 of 1995.

3. Aforesaid regular civil suit had been instituted by present respondent-plaintiff against the present applicants-appellants which has been decreed on 16-04-1996 for partition and separate possession of plaintiff's 1/5th share in suit properties mentioned in operative part of the judgment.

4. Learned counsel Mr. Patil appearing for applicants-appellants contends that though regular civil appeal has been decided in 2003, the matter had in fact been conducted by defendant no.1-their father and applicants had completely reposed confidence in him. Applicants being illiterate had little knowledge and understanding about legal proceedings. They were ignorant about decision being given in 2003. Their father had died in 2005. They believed that the matter is still going on. However, they realized about disposal of the matter in 2003 only when the District Collector intimated them about execution of the decree for partition where-after applicants had applied for certified copies of the judgment and decree which were made available to them on 24-01-2014.

5. Learned counsel for other side, however, contends that there is nothing placed on record to show that the applicants were ignorant till 2014 about decision of the appellate court rendered in way back in 2003, or for that matter, their father alone had been prosecuting the litigation. He submits that the applicants were parties to the proceedings in their own right.

6. On merits of the case, learned counsel for respondent states that the applicants have not been able to prove their contentions before the trial as well as appellate court that their mother happens to be the first wife of deceased defendant no.1 whereas the findings have been given to the contrary whereunder plaintiff – respondent herein had succeeded in establishing that she was the first wife of deceased defendant no. 1.

7. In any event, it is difficult to believe that after 2005, after death of their father, the applicants had a hiatus from litigation when they in normal course would have prosecuted the matter. No efforts is shown to have been made in this regard.

8. Having regard to aforesaid position, even the condonation of delay in filing second appeal is unlikely to serve any purpose for applicants, findings being on facts. The facts give rise to the position that the plaintiff had been fighting for her rights and she has been indicated on both the occasions and she is to get only 28 aar land along with the applicants under the decree which is sought to be second appealed.

9. Taking overall view of the matter, it does not appear to be a case to show any leniency to the applicants, for, they do not appear to lose much land holding than the land in their possession and the reasons given by the courts do not appear to be unacceptable.

Further, most of the applicants are male members and as such are normally better placed than the plaintiff - a lady.

10. In view of aforesaid, the application stands rejected.

11. Civil application no. 5256 of 2014 for stay does not survive and stands accordingly disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd