

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

SECOND APPEAL NO. 127 OF 2015

Devrao s/o Baburao Gayake

..... **APPELLANT**

V E R S U S

Kesharbai w/o Bhagwat Gayake
& Ors.

..... **RESPONDENTS**

.....

Mr. R.D.Kawade h/f Mr. P.R.Katneshwarkar,
Advocate for Appellant.

Mr. Mandar Deshmukh h/f S.G.Chapalgaonkar,
Advocate for R.No. 1.

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CORAM : T.V.NALAWADE, J.

DATE : 29th APRIL, 2016

ORAL ORDER :-

. The Appeal is filed to challenge the Judgment and Decree of Misc. Civil Application No. 689/2014 which was pending in the Court of the District Judge – 1, Beed. The said application was filed by present appellant for condonation of delay of more than six years caused in filing First Appeal against the Judgment and Decree of

maintenance Suit filed by the present respondents. Maintenance is granted by the trial Court and delay condonation application is rejected by the first appellate Court.

2. Appellant is the father-in-law of respondent Kesharbai [original plaintiff No. 1] and other respondent Komal was the daughter of plaintiff No. 1. One Bhagwat was the husband of plaintiff No. 1 and he was son of present appellant. Bhagwat died in the year 1999 when he was living with present appellant in joint Hindu family. The appellant was 'karta' of said family. It is contended that the property is mentioned in the Suit is ancestral property and joint Hindu family property of plaintiff and his sons. It is contended that to deprive the plaintiffs of their right, they were driven out of the house by the appellant. It is the case of the plaintiffs that they have no source of income and they are unable to maintain themselves. The Suit was filed under the provisions of Hindu Adoption and Maintenance Act, 1956. The appellant contested the Suit by contending that he is ready to partition the suit property and give share of Bhagwat to the plaintiffs.

3. Issues were framed on the basis of aforesaid pleadings. Both sides gave evidence. The oral and documentary evidence show that the joint family had agricultural land admeasuring 1 H. 61 R. and the land had irrigation facility, it was Bagayat land. Admittedly, Bhagwat had $1/3^{\text{rd}}$ share in that land and plaintiffs are entitled to get that share. Only the appellant is collecting income from the

agricultural land. Though the appellant contended that he is aged person, he is not doing anything when he is not giving separate share to Bhagwat, it needs to be presumed that he collects income. The trial court granted maintenance @ ₹ 600/- per month to plaintiff No. 1 and maintenance @ ₹ 300/- per month to plaintiff No.2 by decision dated 09/04/2008.

4. In the delay condonation application, present appellant contended that he is suffering from paralysis. He contended that due to paralysis, he lost sight of the eyes and due to that he could not contact Advocate, who was representing him. It is contended that he was not aware of the decision of the Suit and when recovery warrant was served, he came know about the decision and then he approached the Court.

5. The reasoning given by the District Court shows that it considered the entire record brought to its notice. The record shows that notice of the execution proceeding was served on the present appellant on 11/11/2009. Other son of the appellant had filed Suit for partition of the property bearing No. 7/10 and said Suit came to be decreed in view of the compromise pursis filed by the appellant and the said son. In the execution proceeding of the said Suit, joint Hindu family property was shown to be attached. These circumstances speak volumes against the present appellant. They are sufficient to create probability that the appellant and other son are bent upon to see that present respondents do not get their share from joint Hindu family property.

6. The facts and circumstances of the present matter show that even when there was decision and notice of the execution proceeding was also given to the appellant, steps were taken to see that some complications are created. Another Suit was filed. Such conduct of appellant can not be ignored as condoning the delay u/s 5 of the Limitation Act is a matter of discretion of the Court. The appellant only contended that he is ready to give the share of Bhagwat to the plaintiffs but he did not take such steps even when being father and karta, he had such power. Thus, the appellant had enjoyed 1/3rd share belonging to the plaintiffs and so on merits there is no arguable case in the First Appeal to the present appellant. Due to these circumstances also the delay could not have been condoned. This Court sees no reason to interfere in the decision given by the District Court.

7. In the result, Second Appeal stands dismissed. In view of dismissal of Second Appeal, C.A. No. 3737 of 2015 does not survive and stands disposed of.

[T.V.NALAWADE, J.]