

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

**CIVIL APPLICATION NO. 13583 OF 2015
IN
SECOND APPEAL STAMP NO. 30313 OF 2015**

Bapurao s/o Kondalrao Patil **APPLICANT**
[ORI. PLAINTIFF]

V E R S U S

Champabai w/o Kishanrao Biradar Patil **RESPONDENTS**
& Ors. **[ORI. DEFENDANTS]**

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Mr. M.G.Biradar, Advocate for Applicant.

Mr. V.D.Salunke, Advocate for R.Nos. 1 to 3.

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CORAM : T.V.NALAWADE, J.

DATE : 30th MARCH, 2016

ORAL ORDER :-

. The application is filed for condonation of delay of more than 1189 days caused in filing Second Appeal against the Judgment and Decree of R.C.A. Nos. 14/2008 and 15/2008 which were pending in the Court of the District Judge – 1, Udgir. Both sides are heard.

2. R.C.A. No. 14/2008 was filed by present applicant against the Judgment and Decree of R.C.S. No.

220/2003 which was pending in the Court of the Civil Judge [Jr. Division], Udgir. The Suit filed by the present applicant for relief of partition and separate possession and also for declaration was dismissed by the trial Court. This decision is confirmed by the first appellate Court.

3. The Suit was filed in respect of agricultural land bearing S.No. 39/B/1 situated at village Ajani, Tahsil Devni, district Latur and it is decided by the Civil Judge [Jr. Division], Udgir. The area of this land is around 3 H. 59 R. This land was standing in the name of one Abhangrao. Abhangrao had only one son by name Shankarrao. Shankarrao left behind no son and Bhagirathibai was his wife. Shankarrao was living with his family in joint family of Abhangrao. Prior to 1956, Abhangrao agreed to give the suit property to Bhagirathibai for her maintenance. There was one Suit and compromise took place in the said Suit. In the year 1952 itself, the suit property was handed over to Bhagirathibai. As per the agreement, she was to enjoy the property for her maintenance till her death. Bhagirathibai enjoyed the property and the property remained with her till the year 2002, the year in which she died.

4. Abhangrao married another wife as his son Shankarrao was no more. Abhangrao could not get son from this wife and so he adopted the father of plaintiff. It is the case of plaintiff that as limited right was given to Bhagirathibai, after her death the property must revert back to the family of Abhangrao, the plaintiff.

5. Bhagirathibai sold the land to defendant Nos. 2 and 3. Defendant No. 1 is daughter of Bhagirathibai. The defendants contested the matter by contending that Bhagirathibai was absolute owner of the suit property.

6. Issues were framed on the basis of aforesaid pleadings. The trial Court held that on the date when Hindu Succession Act, 1956 came into force, Bhagirathibai was in possession of the suit property and as the property was given in view of her pre-existing right of maintenance, she became absolute owner of the suit property on the date when the Act came into force. The trial Court placed reliance on the case reported as AIR 1977 Supreme Court – 1944 [Vaddeboyina Tulasamma Vs. Vaddeboyina Shesha Reddi]. The first appellate Court has confirmed this decision.

7. Learned counsel for the applicant submitted that there is arguable case in the Second Appeal as the provision of Section 14 (2) of the Hindu Succession Act needs to be used and due to that provision, Bhagirathibai was not the absolute owner of the suit property and so no title passed to the purchasers.

8. To get condonation of delay, not only sufficient cause is required to be shown but it is necessary to show that there is some arguable case with the applicant in the main matter. The aforesaid circumstances show that there is virtually no case with the plaintiff in the main matter. In the case cited supra, the law is settled and the relevant provision, Section 14 is interpreted by the Apex court.

9. For making out sufficient cause, it is contended that there was no communication between the counsel appointed in the District court and the appellant and so the delay is caused. No other contention is made. The delay of more than 1189 days is caused in filing the Second Appeal and so this Court has no hesitation to hold that no case of sufficient cause is made out. The Advocate has not come forward to take the blame to himself. It is already observed that no arguable case is there to make out substantial question of law in the matter.

10. In the result, Civil Application stands rejected.

[T.V.NALAWADE, J.]