

Sequeira

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO. 583 OF 2015

(For restoration)

IN

SECOND APPEAL NO. 287 OF 2006

Along with

CIVIL APPLICATION NO. 1124 OF 2015

(For intervention)

and

CIVIL APPLICATION NO. 1125 OF 2015

(For intervention)

Along with

CIVIL APPLICATION (St.)NO. 7159 OF 2013-(Not on board)

Shri Gaurishankar Chandalappa Baswanti

(Deceased through his legal heirs)

1A. Shri Shivanand Gaurshankar Baswanti

& ors.

.. Applicants /
Appellants

Vs.

Jagdevappa Chandalappa Baswanti & anr.

.. Respondents

Mr.Ashok B.Tajane, for Applicants.

Mr.Surel S.Shah, for Respondent No.1 in CAS No.583 / 2015 and
CAS No.1124 and 1125 of 2015.

CORAM: N.M. JAMDAR, J.

Friday, 11 March 2016.

PC. :

The Application No.583 of 2015 is taken out for condonation
of delay in filing the Application and for setting aside the dismissal

order passed in Civil Application (St.)No.7159 of 2013.

2. These applications have been filed because the Appellants have failed to file Paper book and decree forms in time and the Second Appeal was dismissed for non-prosecution. The Civil Application (St.)No.7159 of 2013 taken out for setting aside the order of dismissal for non-prosecution, is also dismissed.

3. Heard learned counsel for the parties. Perused the application. Detailed reasons are given as to why the Appeal and the Applications were dismissed. Having considered the facts and circumstances, I am of the opinion that the Second Appeal needs to be restored to file however, subject to costs. Accordingly, Civil Application No.583 of 2015 is allowed in terms of prayer clause (a), (b) and (c).

4. By consent of parties Civil Application (St.)No.7159 of 2013 is taken on board and in view of what is stated above, same is allowed in terms of prayer clause (a).

5. Civil Application (St.)No.7159 of 2013 stands restored and in view of this order is taken up for consideration by consent of parties. In view of what is stated above the Application is allowed in terms of prayer clause (b). The Second Appeal No.287 of 2006 stands restored to file. The Paper book shall be filed within period of three weeks from today failing which the Appeal shall stand dismissed for non-prosecution, considering it as an aggravated

conduct of the Applicants. This indulgence is subject to the Applicants paying costs of ₹ 20,000 to the Respondent No.1 which shall be paid within period of three weeks.

6. The two Intervention Application No.1124 of 2015 and No.1125 of 2015 have been filed by the parties contending that they are in actual possession of the suit property which is in dispute between the Applicant and Respondent No.1. This Court in Civil Application No.169 of 2006 has passed an order that after partition proceedings are finalised, it will be open to the parties to apply to the Court for appropriate relief as regards possession. It is informed that the partition proceedings are finalised.

7. Place the Civil Application Nos.1124 / 2015 and No.1125 / 2015 on board on 15 April 2016 wherein Intervenor as well as the Appellant and Respondent No.1 will be heard as to the grant of appropriate relief since the partition proceedings are now finalised.

(N.M. JAMDAR, J.)