

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

968. WRIT PETITION NO. 5956 of 2014

1. Jyoti Satyawan Bhamre,
age 46 years occupation household
R/o Anand Row House, Room No. 5,
behind Kalyani Wooden Furniture,
Bhushan nagar, Kaygaonkar Plot,
Japenagar, Ahmednagar Dist. Ahmednagar.
2. Ashutosh S/o Satyawan Bhamre,
age 10 years occupation student R/o as above,
minor through natural guardian/mother-
petitioner No.1 Jyoti Wd/o Satyawan Bhamre.

...PETITIONERS

VERSUS

1. Sadanand S/o Tanaji Thakur (Bhamre)
age 72 years occupation retired
R/o Plot No. 32, Sadguru Krupa, Sarasnagar,
behind Market Yard, Ahmednagar Dist. Ahmednagar.
2. Suresh S/o Tanaji Thakur (Bhamre),
age 67 years occupation retired
R/o Darade Chawl, Gawali Wada,
Mill Corner Road, Chalisgaon Dist. Jalgaon.
3. Arun S/o Tanaji Thakur (Bhamre),
age 62 years occupation retired
R/o C/o Chief Engineer, Director,
Maharashtra Engineer Training Institute,
Merry, Dindori road, Nashik – 4.

...RESPONDENTS

Mrs. Kalyani Deshmukh, Advocate and Mr. Pradip R. Patil,
Advocate for petitioners.

CORAM : NITIN W. SAMBRE, J.

DATE : 20th September, 2017

ORAL ORDER :

Petitioners are the legal representatives of defendant No.3 in Regular Civil Suit No. 161 of 2007. Defendant No.3 since expired on February 8, 2010, an application on November 24, 2011 came to be moved for bringing his legal representatives on record, viz. Exh. 42, which came to be rejected by order dated September 27, 2013 by the Court of Civil Judge (Junior Division), Chalisgaon.

2. From the record, it depicts that original defendants No.2 and 3 have filed their written statement vide Exh. 19 and contested the suit.

3. The application Exh. 42 for bringing legal heirs on record came to be rejected by the impugned order dated September 27, 2013 passed by the Court below for the reason that present petitioners have failed to explain the delay caused in moving application for bringing legal heirs on record. As such this petition.

4. Mrs. Kalyani Deshmukh, learned Counsel for the petitioners would urge that the order of the Court below lacks consideration of

basic principle that in a suit for partition, even defendants are co-claimants for share in the property. According to her, without considering the said principle, in mechanical manner, the Court below has rejected the claim for condonation of delay in bringing legal heirs on record. According to her, after this Court has ordered notice to respondents, none appeared for the respondents, though served. As such, the contentions raised in present petition are not controverted. She would submit that in view of provision of Order XXII Rule 4 of the Civil Procedure Code, the Court below should have condoned delay; and by putting the petitioners to some condition, should have ordered bringing legal representatives on record.

5. Perused record. The order impugned rejecting claim for bringing legal heirs on record by condoning delay is passed by the Court below without considering the fact that defendant No.3 has contested the suit by filing written statement and if the legal representatives would have been permitted to be brought on record by condoning delay, no prejudice would have been caused to the plaintiff or other co-defendants. Apart from above, fact remains that it is not the observation of the Court below that because of delay caused at the behest of the petitioners, the hearing in the suit was arrested.

6. In view of above, the impugned order dated September 27, 2013 passed by the Civil Judge (Junior Division), Chalisgaon, below Ex. 42 in Regular Civil Suit No. 161 of 2007 is hereby quashed and set aside. Application Exh. 42 moved by the petitioners for bringing legal heirs and for condonation of delay is allowed, subject to the payment of costs Rs. 1500/- (Rs. One thousand five hundred only), to be deposited in the said Court, within a period of ten weeks from today, to which the plaintiff shall be entitled.

7. The petition stands allowed in above terms.

(NITIN W. SAMBRE, J.)

pjm