

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

WRIT PETITION NO. 6416 OF 2014

1. Sandeep s/o Ramji Chavan
age 21 years, occ. education
2. Savita d/o Ramji Chavan
age 25 years, occ. housewife
3. Anita d/o Ramji Chavan
age 20 years, occ. nil
4. Vanita d/o Ramji Chavan
age 17 years, occ. education
5. Pradyumna s/o Ramji Chavan
age 15 years, occ. education

All are r/o Meharban Naik Tanda
Tq. Paithan, Dist. Aurangabad.

(petitioner no. 4 and 5 are under
guardianship of real mother
Shashikala w/o Ramji Chavan)

.. PETITIONERS

VERSUS

1. Kedarnath s/o Fakirchand Totla
age 54 years, occ. agril
r/o Bidkin, Tq. Paithan, Dist. Aurangabad
2. Ramji s/o Sura Chavan
age 42 years occ. agril
r/o Meharban Naik Tanda
Tq. Paithan, Dist. Aurangabad.

.. RESPONDENTS

Mr. R.D. Biradar, advocate for petitioners.
Mr. P.K. Lakhotiya, advocate for respondent no. 1.

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**CORAM : S. B. SHUKRE, J.
DATE : 16th JANUARY, 2017.**

ORAL JUDGMENT :

1. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent.

3. A serious objection to the maintainability of this petition has been taken by the learned counsel for respondents. He contends that this petition challenging the order of dismissal of the suit has been filed by petitioners, who are the original plaintiffs, after long delay of about eight years and that too without mentioning a single line of justification for the delay. He also submits that somewhere the Court has to draw finality to the rights of the parties. This is, however, disputed by learned counsel for petitioners who submits that most of the petitioners at the time when the suit was filed were minor and there is no dispute about this fact. He states that the father of petitioners was a drunkard and their mother had filed the suit but, due to illiteracy and poor financial condition, could not garner adequate resources to continue to prosecute the suit. He also submits that even today, some of the petitioners are minor. According to him, ancestral property has been sold in the instant case and, if the suit is not allowed to be contested on merits of the case, the petitioners would suffer irreparable loss and may also be driven to the brink of poverty.

4. In the case of Gulam Rasool Lone Vs. State of Jammu and Kashmir & ors. reported in **2009(15) SCC 321** the Hon'ble Apex Court has laid down that while considering the issue of delay and laches on the part of petitioners, the Court must also consider the aspect of equity and the effect that the delay caused would have on the rights of the other party. The

Hon'ble Apex Court has also observed that this aspect of the case must be considered in the facts and circumstances of the case.

5. In the present case, the circumstances, about which there is no dispute, speak for themselves. All of the petitioners were minor at the time when the suit was filed. The suit was for declaration that the sale of ancestral property was vitiated on various counts, which are specifically mentioned in the plaint. The property in question was ancestral property and the suit itself was filed through their mother. Now some of them have attained majority and they could realise now that there were some mistakes committed by their mother in prosecuting the suit. These circumstances, in my view, to a great extent would justify the delay that occurred in the instant case.

6. My attention has also been invited to another fact, which is quite relevant. Another civil suit has been filed by the petitioners and this suit is in respect of the same property. In this suit, perpetual injunction has been sought against both the respondents in addition to other parties who are defendants therein. If the other suit is pending between the parties in respect of the same property, it would be appropriate that even this suit is allowed to be contested on merits and that would help in finally deciding the rights of property in respondents. As regards inconvenience caused to respondents, I am of the view that same can be taken care of by imposing appropriate cost.

7. In the result, writ petition deserves to be allowed and it is accordingly allowed. The impugned order is hereby quashed and set aside and the suit is directed to be restored for being proceeded with in accordance with law from the stage at which it was dismissed, subject to condition that the petitioners shall pay cost of Rs. 5,000/- each to respondents 1 and 2 within four weeks from the date of order. Rule made absolute in the above terms.

(S. B. SHUKRE)
JUDGE

dyb