

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application (CAS) No.396 of 2015

In

Second Appeal Stamp No.7804 of 2015

(Vishnu Sadashiv Turak v. Smt. Gangotribai @ Gangubai Namdeorao
Alaspure)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri R.P. Joshi, Advocate, holding for Shri A.A. Naik, Advocate
for Applicant/Appellant.

Coram : R.K. Deshpande, J.

Date : 9th February, 2017

The Trial Court passed a decree for possession of one-fourth share of the plaintiff in the suit, included in Schedule A. The lower Appellate Court has modified the decree passed by the Trial Court and the share of the plaintiff has been enhanced to one-half. The original defendant is before this Court in this second appeal along with the application for condonation of 297 days' delay caused in filing an appeal.

One Sadashiv was the owner of the property, who died on 19-7-1989 and was survived by widow Sukhubai; the appellant-defendant, the adopted son, and the plaintiff, the daughter of Sadashiv. It is not the finding of the Courts below that the property was the ancestral property at the hands of

father Sadashiv. The succession is covered by Section 8 of the Hindu Succession Act, and accordingly, the widow, adopted son, and the plaintiff-daughter succeeded to one-third share each in the suit property. The widow died, and taking into consideration this fact, the plaintiff and the defendant are held entitled to one-half share by the lower Appellate Court. According to Shri Joshi, the learned counsel for the applicant/appellant, the plaintiff being the step-daughter of Sakhubai, could not have succeeded to any share in the property belonging to widow Sakhubai.

There is a delay of 297 days caused in filing an appeal. The judgment was delivered on 19-3-2014. The application for certified copy was filed on 25-2-2015 and it was received on 26-2-2015. Except saying that the time was consumed in searching the counsel, getting his opinion, drafting the second appeal, and filing it, the period from 26-2-2015 to 6-4-2015, i.e. the date of filing of the second appeal, has not at all been explained. There is no sufficient cause to condone the delay.

The civil application for condonation of delay is dismissed.

Judge.