

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

Civil Application (CAS) No.356 of 2016

In

Second Appeal Stamp No.11760 of 2014

(Adaku Ramsu Usendi and others v. Sau. Minko Kashiram Narote and others)

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

Shri V.R. Thote, Advocate for Applicants/Appellants.
Shri V.N. Morande, Advocate for Respondent No.1.

Coram : R.K. Deshpande, J.

Date : 17th February, 2017

Civil Application (CAS) No.356 of 2016 :

This application is for condonation of 36 days' delay caused in filing an appeal. Notice was issued to the respondents. Shri Morande, the learned counsel, appears for the respondent No.1. After going through the averments, which remain uncontroverted, I am satisfied that a sufficient cause is made out for condonation of delay. Hence, the delay caused is condoned.

The civil application is disposed of.

Second Appeal Stamp No.11760 of 2014 :

Heard Shri Thote, the learned counsel for the appellants,
on merits of the matter.

The Trial Court dismissed the claim for adoption of the plaintiff as the daughter of Mitya and Kami. The parties belong to Gond community, which is the Scheduled Tribe, and the lower Appellate Court records the finding that the adoption is required to be proved on the basis of the custom prevailing in the community. The Trial Court dismissed the suit on the ground that the custom has not been established. Perusal of the finding recorded by the lower Appellate Court does not indicate the evidence regarding the custom for adoption prevailing in the community.

Admit, on the following substantial question of law :

Whether the lower Appellate Court has committed an error in holding that the custom of adoption has been established in the present case?

Shri Morande, the learned counsel, waives service of notice for the respondent No.1.

Call for R & P.

Civil Application No.357 of 2016 :

The substantial question of law has already been framed.

The appeal has been admitted.

In view of this, there shall be interim relief in terms of prayer clause (i) of this civil application, which shall continue to operate pending the decision of the appeal.

The civil application is disposed of.

Judge.

Lanjewar