

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:

NAGPUR BENCH : NAGPUR

Civil Application [CAO] No. 983 of 2017

IN

Civil Application [CAO] No. 550 of 2017

IN

Second Appeal St. No. 10988 of 2017

[Chandrashekhar Anandrao Deshmukh Vs. Sau. Vanita Sureshrao Chavan & others]

And

Civil Application [CAS] No. 809 of 2017

IN

Second Appeal No. 61 of 2016

[Ashok Vithobaji Sabane Vs. Sau. Vanita Sureshrao Chavan & others]

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

Court's or Judge's orders

Civil Application No. 550 of 2017 :

Mr. A. J. Thakkar, Adv., for the applicant.
Mr. M.R. Johrapurkar, Adv., for respondent no.4.

Second Appeal No. 61 of 2016 :

Mr. M. R. Johrapurkar, Adv., for the appellant.
Mr. A.J. Thakkar, Adv., for respondent no.4.

CORAM : A. S. CHANDURKAR, J.

DATE : 04th August, 2017

Civil Application Nos. 983 & 809 both of 2017 :

Considering contents of the applications which are supported by copies of the notices sent by Registered Post, the appearance of Shri H. P. Lingayat, learned counsel for respondent nos. 1 to 3 in both the appeals is discharged.

Applications are allowed and disposed of.

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Civil Application No. 550 of 2017 :

Notice on this application was issued on 16th June, 2017. On said date, Shri H. P. Lingayat, learned counsel, waived notice on behalf of respondent nos. 1 to 3. Subsequently, said counsel issued a Registered Notice to the respondent nos. 1 to 3 for withdrawing his Vakalatnama. Said request has been accepted while allowing Civil Application No. 983 of 2017.

The applicant prays that the delay in filing the Second Appeal be condoned. The reasons for the delay are mentioned in para 5 of the application.

The respondent nos. 1 to 3 have not entered appearance after receiving notice from their learned counsel. Shri M.R. Joharapurkar, learned counsel, appears for legal heirs of respondent no.4.

As the reasons for the cause of delay appear to be acceptable and as the judgment impugned in this appeal is also the subject-matter of the Second Appeal bearing no. 61 of 2016, the delay in filing the appeal stands condoned.

Civil Application is allowed and disposed of.

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Second Appeal No. 61 of 2016 & Second Appeal St. No. 10988/2017 :

The respondent nos. 1 to 3 are the original plaintiffs who had filed suit for partition and separate possession of agricultural field admeasuring 2 hectares 12 Are. The defendant who is their brother raised a plea that his father Vithobaji had executed a Will dated 27th September, 2006 in his favour and bequeathed the entire property to him. The trial Court after considering the evidence on record held the Will at Exh.58 to be not proved. The suit was decreed by granting 1/4th share each to the plaintiffs who are the sisters of the defendant. The defendant was also granted 1/4th share. During pendency of the appeal filed by the defendant, the suit property was sold to the appellant in Second Appeal St. No. 10988/2017. He was accordingly impleaded in the appeal. The appellate Court has maintained the aforesaid judgment.

After hearing Shri Joharapurkar, learned counsel for the appellant in Second Appeal No. 61 of 2016 and Shri A.J. Thakkar, learned counsel for the appellant in Second Appeal St. No. 10988 of 2017, I find that the finding recorded by both the Courts as to the invalidity of Will dated 27th September, 2006 at Exh.58 is based on the evidence led by the parties and especially that of the attesting witness - DW 2. Both the Courts have considered various suspicious circumstances while holding the said Will to be not proved. This finding is based on the material on record and hence does not give rise to any substantial question of law.

The trial Court, however, after noting that Vithobaji had expired on 10th May, 1957 has relied upon the provisions of Section 6 of the Hindu Succession Act, 1956 [as amended in the year 2005] for determining the respective shares. It has been observed that the case was covered by said amendment. Considering the fact that Vithobaji, the father, was not alive when the amending Act came into force, the following substantial questions of law arise for consideration:-

- [a]** Whether the defendant is entitled for half share in the suit property and defendant nos. 1 to 3 are entitled to claim share from that of their father - Vithobaji?
- [b]** Whether the sale-deed dated 14th May,

2012 in favour of the subsequent purchaser is liable to be held valid only to the extent of share of deceased Ashok?

Notice is made returnable on 18th September, 2017.

Hamdast is granted.

Judge

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