

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

CIVIL APPLICATION (S) NO.1018 OF 2016
IN
SECOND APPEAL ST. NO.21618 OF 2016.

KAILASH S/O CHINKU MULE AND ANR.
VS
VIMAL W/O ANANDA WAGH AND ANR.

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

Court's or Judge's orders

Shri N. B. Kalwaghe, Advocate for the applicant.

CORAM : A.S. CHANDURKAR, J.
DATED : JUNE 20, 2017.

Prayer is to condone delay in filing second appeal. The reasons for the cause of delay are mentioned in paras 2 to 7 of the application. The prayer is opposed by the learned Counsel appearing for respondent no.1. Considering the fact that the suit was filed for partition and separate possession and as the delay does not appear to have been deliberately caused, the same stands condoned.

Civil application is allowed and disposed of.

SECOND APPEAL ST. NO.21618 OF 2016.

The original plaintiff - Vimal who filed suit for partition and separate possession of ancestral property on 15-11-2010 pleaded that her father Chinkuba had left the village prior to 25 years and his whereabouts were not known to the family. According to her, there was a presumption of his civil death. As per the provisions of Section 6 of the Hindu Succession Act, 1956 as amended by Act No.39/2005, a living

daughter of a living coparcener as on 9-9-2005 is entitled to right in ancestral property as per the said amendment.

The following substantial law arises for consideration:

When it is the case of the plaintiff – daughter that the whereabouts of her father were not known since 1985 and it was her case that there was a presumption as to his civil death, what is the effect of the amended provisions of Section 6 of the Hindu Succession Act, 1956 on her claim for partition?

Notice returnable on 7-8-2017.

Shri Choube, learned Counsel waives notice on behalf of respondent No.1.

Hamdast for service on other respondents.

CIVIL APPLICATION (S) ST. NO.2162/2016.

Issue notice returnable on 7-8-2017.

Ad interim relief in terms of prayer clause (b).

JUDGE