

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 980 OF 2019
WITH
CIVIL APPLICATION NO. 981 OF 2019
IN
SECOND APPEAL (ST.) NO. 28974 OF 2018***

Smt. Satyabhama Pralhad Mane & Ors. ... Applicants

Vs

Smt. Pramila Babaso Dhumale & Ors. ... Respondents

Mr. Umesh R. Mankapure, Advocate for the Applicants.
Mr. Tejas Pawar i/b. Bhushan A. Walimbe, Advocate for
Respondent No. 1.

CORAM : SANDEEP K. SHINDE J.
DATE : September 18th, 2019

P.C. :

1. Civil Application No. 980 of 2019 is for condonation of delay, caused in preferring this appeal against the decree dated 29.01.2018 passed in Regular Civil Appeal No. 101 of 2015 by the Civil Judge, Senior Division, Islampur. Heard learned counsel for the respective parties.
2. For the reasons stated in the application, delay is condoned.

3. Application is allowed in terms of prayer clause 'a'.
4. That since delay is condoned, appeal is taken up for admission.
5. Heard learned counsel for the parties.
6. Respondent Smt. Pramila Dhumale instituted Regular Civil Suit No. 156 of 1989 against one Dhondiram Bapu Mane & Anr. for removal of encroachment and for possession of the encroachment area admeasuring 5R, as shown in the map annexed to the plaint. The suit was decreed on 24.09.2008 however, decree was signed on 07.10.2008. Dhondiram Bapu Mane died on 07.10.2008. These facts are not in dispute.
7. Appellants herein had filed an application under Order 21 Rule 97 and obstructed the decree passed in Regular Civil Suit No. 156 of 1989. The obstructionists are claiming to be nephew of Dhondiram Mane. They further claim and would assert that in view of the oral partition, the suit property had fallen to the share of their father late Pralhad. They would further assert and contend that the plaintiff did

not implead them as defendants. They would also contend that since the suit property had fallen to their share, they have right and interest therein and as such claimed right vide application under Order 21 Rule 97.

8. The applicants' (obstructionists') application was dismissed by the Trial Court and in Regular Civil Appeal, the order of the Trial Court was confirmed and maintained. It is against the Judgment and Order passed (being decreed), the appellants have preferred this appeal.

9. I have perused the application filed under Order 21 Rule 97 and also perused the evidence.

10. There is no evidence to accept the case of partition, as pleaded by the applicants. Therefore, the findings recorded by the Trial Court cannot be faulted with, as it is consistent with the evidence on record. The evidence does not disclose even prima facie right and interest of the appellant in the suit property, which enables them to invoke the provisions of Order 21 Rule 97 of Code of Civil Procedure, 1908.

11. Even otherwise, Appellants' right to claim and assert

interest in the suit property on account of oral partition, is independent of the decree passed in the subject suit proceedings.

12. Appeal therefore does not give rise to any substantial question of law. Appeal is dismissed. Both Civil applications are disposed of accordingly.

(SANDEEP K. SHINDE, J.)