

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 76 OF 2019
WITH
CIVIL APPLICATION NO. 1408 OF 2018**

Shivaji Dattatray @ Dattu MuleAppellant
vs.
Subhash Uttareswar Patane (died) & Ors. ...Respondents

Mr. Mahadeo A. Choudhari, for Appellant.
Mr. Satish Raut, for Respondent Nos. 2 to 5 and 7A to 7E.
Mr. Anukul Seth i/b Mr. M.v. Thorat, for Respondent no. 1,10, 11A to 11F
and 18.

**CORAM : S.C. GUPTE, J.
DATE : 11 NOVEMBER 2019**

P.C. :

1. Heard learned Counsel for the parties.
2. This second appeal challenges an order passed by the district court at Solapur in an appeal. The appeal was in challenge of a decree of partition passed in a suit filed by Respondent nos. 1 to 5 (original plaintiffs). There was a delay of over 10 years in filing the appeal. That delay was sought to be condoned by the misc. civil application in which the impugned order came to be passed. By that impugned order, the learned district judge refused to condone the delay.
3. In the first place, it was claimed before the district court that there was no service of writ of summons on the Appellant/Applicant. The court found that the applicant had signed at two different places on the writ of summons. That was on the basis that it was accepted on only by the

Appellant/Applicant for himself but also for his brother, who was Defendant no. 9 in the suit, and on whose behalf the former signed the writ of summons at the second place. The court found that though the Applicant had contested his signature on the writ of summons, he chose to be vague in his application in this behalf. The court was of the view that a bare denial of signature was not sufficient as against the record in the form of a bailiff's report. Though the Applicant pointed out before the court that he was in armed forces at the material time, the court observed that he had not produced any document to show that at the given date (i.e. when he was supposed to have been served), he was in service and was not available at the address mentioned in the summons. In the absence of any such material on record, the court found that the Applicant's bare denial of signature and that coming after more than 20 years, was nothing but an afterthought and liable to be discarded.

4. The other ground which was urged before the court was that the surname of some of the Defendants, being 'Pawar', was wrongly mentioned as 'Musale' in the original plaint and this is the reason why they did not appear before the trial court. As the court found, as a matter of record, that the Defendants had not denied their identity as Musale @ Pawar or claimed that they chose to refuse it for that reason. The court observed that their own explanation was that they were known by both surnames.

5. Nothing in this order raises any substantial question of law. Learned Counsel for the Appellants submits that the form of the bailiff's report was not proper. It is also submitted that in case the delay was not condoned, an injustice would be perpetuated. It is submitted that the Appellant has been in possession of the suit property for a long time. It is submitted that the

Appellant did not appear at the hearing before the trial court on the ground that he was informed that the suit was merely for partition as between family members and he had nothing to do with the same. Not only is this contention contrary to what was submitted before the lower appellate court but that such bare assertion cannot inspire confidence. It does not give rise to any substantial question of law.

6. Accordingly, there is no merit in the second appeal. The second appeal is dismissed.

7. At the request of learned Counsel for the Appellant, interim protection granted in his favour on 24 October 2018 and continued till date, is continued for a further period of four weeks from today.

(S.C. GUPTE, J.)