

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

CIVIL APPLICATION (CAS) NO.841 OF 2019

IN

SECOND APPEAL (STAMP) NO.5596 OF 2017

(Laxmanprasad s/o Dasaoprasad Shriwas ..vs.. Smt. Meerabai Alleged wd/o Parmeshwardin Shriwas
and others)

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

Court's or Judge's orders

Shri B.M. Kharkate, Counsel for the appellant,
Shri R.K. Borkar, Counsel for respondent 1.

CORAM : ROHIT B. DEO, J.

DATED : 23-04-2019

At the request of the learned Counsel for the appellant, the names of deceased respondents 1 and 3 are deleted, at the risk of the appellant.

2. The application is disposed of accordingly.

Civil Application (CAS) No.1247/2017

This Court is not satisfied with the justification pleaded for condonation of delay.

2. However, only in order to ascertain whether there is an arguable case on merits, this Court has looked into the record, and having done so, this Court is satisfied that no question of law much less a substantial question of law is involved.

3. The plaintiffs brought suit for possession of the suit property, which is an agricultural field, on the basis of sale-

deed dated 11-4-1975 executed by Mehtar Dalpat Lilhare.

4. The defendants set up a two fold defence. The sale-deed dated 11-4-1975 is in the joint names of Smt. Meerabai and Shri Sushilkumar Soni. The defendants did not dispute that one of the parties to the suit is plaintiff 2-Sushilkumar Soni. The defendants contended that as on the date of filing of the suit Sushilkumar Soni was dead. The defendants denied that plaintiff 1-Smt. Meerabai is the Meerabai who is party to the sale-deed dated 11-4-1975. The defendants contended that, as a fact, it is defendant 2 who is party to the sale-deed and the advantage of the common name is taken by plaintiff 1. The specific case of the defendants is that the name of defendant 2 prior to marriage was 'Chandrakalabai' and post marriage was 'Meerabai'. The other defence set up is that the suit property is owned and possessed by defendant 1 by virtue of gift-deed executed in the year 1982.

5. Both the Courts below have recorded a finding of fact that plaintiff 2, who admittedly is a party to the sale-deed, is alive. This finding is unexceptionable. Defendant 2, who claims to be the Meerabai, who is party to the sale-deed dated 11-4-1975, did not enter the witness box. It has come on record that the age of Meerabai who is party to the sale-deed dated 11-4-1975 is referred to as 28 in the sale-deed and irrefutably defendant 2 was aged 45 years as on the date of the sale-deed. Both the Courts below have further recorded a finding of fact that there is absolutely no evidence adduced by defendant 2 that after marriage, her name is Meerabai. In the teeth of the evidence on record, the findings which are concurrently recorded to the effect that plaintiffs 1 and 2 are

the owners of the suit property by and under the sale-deed dated 11-4-1975, do not suffer from any infirmity.

6. Defendant 1 claims to be the owner of the suit property relying on a mutation entry which makes a reference to a gift-deed. The gift-deed is not produced on record much less proved. The Courts below have rightly held that the mutation entry, and which mutation entry is taken without notice to plaintiffs, is of no relevance. A mutation serves a limited fiscal purpose and cannot confer title.

7. Since this Court finds that the appeal is without substance, there is no propriety in showing any indulgence by condoning the delay.

8. The application for condonation of delay is rejected.

JUDGE

adgokar