

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

CIVIL APPLICATION (CAS) No.38/2019

in

Second Appeal Stamp No.22962/2018

Abdul Rahman S/o Abdul Sattar Sheikh

Vs.

Smt. Nazrin Parveen Wd/o Sheikh Abid and others.

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

Court's or Judge's orders

Mr. N.R. Bhishikar Advocate for appellant
Mr. D.R. Bhoyar, Advocate for respondents

CORAM : MANISH PITALE, J.

DATED : SEPTEMBER 25, 2019

This is an application for condonation of delay in filing the accompanying appeal. The applicant is original defendant No.2 and he seeks to challenge concurrent orders passed by the two Courts below by way of the accompanying appeal. It is stated in the application for condonation of delay that he could not approach this Court within time because he was suffering from neurological ailment and a paralytic attack that he suffered made his movements independently difficult. It is claimed that in these circumstances, the said delay occurred in filing the accompanying appeal.

2. The prayer made in the said application is

opposed on behalf of the contesting respondent No.1 (original plaintiff).

3. Although the prayer for condonation of delay is opposed, the record shows that the contesting respondent No. 1 (original plaintiff), is the sister-in-law of the applicant / appellant and the dispute between the parties pertains to claim of the respondent No. 1 towards share in the property. It was claimed by respondent No.1 that she was entitled to entire share of property to which her deceased husband was entitled. Considering the fact that the dispute in the present case is within the members of the same family and it is a question of entitlement under Muslim Law, as regards the extent of share to which the parties will be entitled, it would be appropriate that the dispute is decided on merits. Yet, inconvenience caused to respondent No.1 (original plaintiff), cannot be ignored, particularly, because she is a lady and she has been agitating her rights before the Courts below as regards her entitlement of share in the property to which her deceased husband was entitled.

4. In view of the above, the delay is condoned and the applicant / appellant is directed to pay amount of Rs.20,000/- towards costs to the respondent No.1 (original plaintiff), within a period of four weeks from today.

SECOND APPEAL No. _____/2019.

Heard learned counsel for the appellant.

2. The respondent No.1 (original plaintiff), filed a suit for partition and separate possession, claiming that she was entitled to share in the property belonging to the family, to which her deceased husband was entitled. It was claimed by respondent No.1 (original plaintiff) that under the Muslim Law, her husband was entitled to 2/9th share in the suit property and that, therefore, a decree was required to be passed in her favour recognizing her entitlement to the aforesaid share in the suit property. The defendants in the present case were the brother-in-law and sisters-in-law of respondent No.1 (original plaintiff). The claim raised by respondent No.1 (original plaintiff), was resisted on behalf of the defendants.

3. The Trial Court accepted the contention raised on behalf of respondent No.1 (original plaintiff), and decreed the suit in her favour, holding that she was entitled for 2/9th share of the suit property. Accordingly, the property was directed to be partitioned and respondent No.1 (original plaintiff), was directed to be given the proper share in the suit property. The appeal filed against the said decree was dismissed by the Appellate Court.

4. The learned counsel for the appellant

(defendant No.2), who is one of the brothers-in-law of respondent No.1 submitted that on a proper reading of paragraphs No.61 to 63 of Chapter 7 pertaining to Hanafi Law of Inheritance as per principles of Mahomedan Law recorded by Mulla, respondent No.1 would, at the most be entitled to $1/4^{\text{th}}$ part of $2/9^{\text{th}}$ share to which deceased husband of respondent No.1 was entitled. The learned counsel appearing for the appellant invited attention of this Court to paragraph No.63 pertaining to sharers read with table of sharers given in Sunni Law at page No. 66-A in the said Chapter, particularly, the shares specified for wife at Sr. No.4 and full sisters at serial No.11, to contend that the respondent No.1 would not be entitled to entire $2/9^{\text{th}}$ share in the suit property to which her deceased husband was entitled and that she was entitled to $1/4^{\text{th}}$ of the said share. In view of the above, issue notice on following substantial questions of law.

1. Whether the Courts below were justified in granting decree in favour of respondent No. 1 (original plaintiff), holding that she was entitled to $2/9^{\text{th}}$ share in the suit property when the law pertaining to Hanafi Law of Inheritance, the chart showing extent of shares read with paragraph 63 specifying sharers, indicates the specific share to which a wife under the said law would be entitled in respect of share that would fall in favour of her husband ?

2. Whether in view of the specific paragraphs mentioned under Chapter 7 pertaining to Hanafi Law of Inheritance, decree passed by the Courts below granting 2/9th share to respondent No. 1 is sustainable?

5. The notice shall be returnable in six weeks for final disposal.

6. Call for record and proceedings.

7. Needless to say, despite pendency of the present appeal, parties would be at liberty to explore the possibility of settlement. In view of the fact that the parties may attempt settlement through mediation, in aid thereof the respondent No.1 may not press the execution proceedings.

JUDGE