

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

**CIVIL APPLICATION NO. 352 OF 2018 IN
SECOND APPEAL (ST.) NO. 4695 OF 2018**

(Shri Ashok Sheshrao Sarkate Vrs. Shri Fakira s/o Sampat Gaikwad and ors.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.S. Shinde, Advocate for applicant/appellant.
Shri B.N. Mohta, Advocate for respondent No. 1.
Shri S.S. Bhalerao, Advocate h/f Shri N.B. Kalwaghe,
Advocate for respondent Nos. 2 & 3.

CORAM:- PUSHPA V. GANEDIWALA, J.
DATED :- DECEMBER 09, 2020.

Heard.

2. This is an application for grant of leave to file Second Appeal. The applicant who is claiming to be the purchaser of the portion of suit property from respondent Nos. 2 and 3 herein filed this application, being feeling aggrieved by the judgment and order passed by the Principal District Judge, Washim in R.A.C. No. 14/2010 dated 04/05/2017.

3. It is stated that initially a partition suit was filed by respondent Nos. 2 and 3 (daughters) against the father and uncle. The suit came to be decreed and the partition was effected. The respondent Nos. 2 and 3 herein sold their share of property to the present applicant. It is stated that prior to the aforesaid sale transaction, respondent No. 1 had already preferred appeal against the decree of the trial Court. In other

words, during the pendency of the appeal, the sale was executed by respondent Nos. 2 and 3. The applicant claims that he purchased the said property without notice. It is his claim that respondent Nos. 2 and 3 did not inform him about the filing of the appeal by respondent No. 1.

4. The appeal came to be allowed and the decree of the trial Court came to be reversed and thereby suit is ultimately dismissed.

5. The dismissal of the suit by the Appellate Court would affect the transaction of sale by respondent Nos. 2 and 3 to the present applicant.

6. In this way, he felt aggrieved by the judgment and order of the first appellate Court. Shri Mohta, learned counsel for respondent No. 1 urged that the present applicant has no independent right to file the present appeal as the respondent Nos. 2 and 3, the predecessor in title of the present applicant have already preferred an appeal against the said judgment and decree of the first appellate Court.

7. This Court inquired about substantial question of law that would need to be considered in deciding the proposed appeal. It is submitted that the first appellate Court reversed the finding of the trial Court on the ground that when the father is alive, daughters have no right to claim partition. The parties have also shown their consensus on this question which would have to be considered in the Second Appeal filed by respondent Nos. 2 and 3 i.e. daughters. As in both the appeals the same

substantial question of law would have to be considered by the Court, and to protect the right of the present applicant, it is necessary, he being the purchaser, be given an opportunity of being heard to protect his right.

8. In such circumstances, the application is allowed.

CIVIL APPLICATION NO. 386 OF 2018

Considering the aforesaid position, delay is condoned in filing an appeal.

The application is allowed and disposed of accordingly.

The appeal be registered.

SECOND APPEAL (ST.) NO. 4695 OF 2018

Heard.

ADMIT

Issue notice to respondents for final disposal, returnable after four weeks, on the following substantial question of law :

- (i) Whether during the lifetime of the father the daughters have right to claim partition?

Shri Mohta, learned counsel for respondent No. 1 and Shri Bhalerao, learned counsel for respondent Nos. 2 and 3, waive notice.

JUDGE