

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.4782 OF 2020
IN SAST/39194/2018

VASANT S/O MAROTI JADHAV DECEASED THROUGH LRS KAVITA
VASANT JADHAV AND ORS
VERSUS
PRAKASH S/O RAMRAO BODKHE AND OTHERS

...
Mr. Amay Sabnis h/f Mr. L. D. Vakil, Advocate for applicants.
Mr. S. S. Thombre, Advocate for respondent No.1.
...

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 09.08.2021

Pronounced on : 27.08.2021

ORDER :-

. Present application has been filed for getting the delay of 1124 days condoned in filing civil application for bringing the legal representatives of appellant - original plaintiff on record.

2. Present appellant – Vasant Maroti Jadhav had filed Regular Civil Suit No.49 of 2004 for declaration of ownership and alternatively for possession and perpetual injunction. That suit came to be dismissed by learned 14th Joint Civil Judge Junior Division, Aurangabad on 20.01.2014. He had then filed Regular Civil Appeal No.86 of 2014, which was dismissed by learned Ad-hoc District Judge-1, Aurangabad on

20.08.2018. It has been contended that during the pendency of the first appeal itself, the sole appellant had died on 02.10.2015. The applicants had taken the certified copies of the judgment and decree with an intention to prefer second appeal. The original plaintiff and his friends had purchased plots and when there was infringement of their right, they all had filed separate suits for declaration and injunction. All the suits were dismissed. All of them had filed first appeals. All of them were decided by the learned first Appellate Court on the same day and dismissed. After drafting second appeals, the Advocate for the appellant informed the friend of deceased Vasant to get the signature of Vasant on his Vakalatnama, at that time, it was informed by those friends that Vasant has expired. However, legal representatives of Vasant had no idea about the pendency of the appeal filed by Vasant and, therefore, after getting information about his legal representatives, the present application has been filed. The delay is unintentional. Vital rights in the immovable property are involved and, therefore, it is necessary to bring the legal representatives on record.

3. Heard learned Advocate Mr. Amay Sabnis holding for learned Advocate Mr. L. D. Vakil for the appellant and learned Advocate Mr. S. S. Thombre for respondent No.1.

4. Learned Advocate for the applicants supported the reasons given by them in the application, whereas learned Advocate for respondent No.1 strongly opposed the application and submitted that when the applicants were having knowledge about the fact of death of original plaintiff when the matter was before the first Appellate Court, they failed to bring his legal representatives on record. Now, when they were not brought on record before the first Appellate Court, they cannot come to this Court and ask for condonation of delay.

5. At the outset, it is to be noted that in the plaint, plaintiff – Vasant had contended that defendant Nos.2 to 4 had executed general Power of Attorney in favour of defendant No.1 on 05.02.1996 in respect of suit property described in paragraph No.1-A of the plaint. Defendant No.1 executed sale deed in favour of plaintiff by registered sale deed dated 17.03.1998. Defendant Nos.2 to 8 had tried to remove the markings of the boundary of the plot on 27.10.1996. Defendant No.1 filed suit i.e. Regular Civil Suit No.1205 of 1996 for injunction against defendant Nos.2 to 8, however, that suit was compromised on 29.08.1997, but defendant No.1 had again filed Special Civil Suit No.206 of 1998 for specific performance of the contract in respect of the suit property described in paragraph No.1-A of the plaint. Defendant Nos.2 to 4 cancelled Power of Attorney granted in favour of defendant No.1 on

30.03.1998 i.e. during the pendency of Special Civil Suit No.206 of 1998. Defendant No.1 had also filed Regular Civil Suit No.1338 of 2000 for injunction against defendant Nos.2 to 8. Both the suits were compromised and the general Power of Attorney was cancelled. Plaintiff contended that he had paid the full consideration to defendant No.1 and purchased the plot. Plaintiff was not party to those proceedings which were between the defendants *inter se*. Defendant No.1 by his written statement and defendant Nos.2 to 8 by their collective written statement denied all the contentions raised by the plaintiff. It was held by the learned Trial Judge that plaintiff has failed to prove that he has become owner and possessor of the suit property. It was held that the compromise decree passed in Regular Civil Suit No.1338 of 2000 on 19.08.2002 is binding on the parties, thereby the suit was dismissed. First appeal was dismissed.

6. During the pendency of first appeal, Vasant Maroti Jadhav expired on 02.10.2015. The said appeal was decided on 20.08.2018. There was no attempt to bring the legal representatives of deceased Vasant on record before the first Appellate Court. Now, his legal representatives have filed the present application praying that they should be added as legal representatives of the appellant – original plaintiff. When there is question of declaration and injunction and it is through a sale deed, then

the legal representatives of the plaintiff can claim succession to the property after demise of Vasant and, therefore, the right to sue survives against the legal representatives of Vasant.

7. The applicants are coming with the case that they had absolutely no idea about the pendency of the appeal and, therefore, though the fact of death of Vasant was within their knowledge, they could not take steps to bring his legal representatives on record. No doubt, there is absolutely inordinate delay in approaching this Court. Even after death of Vasant, the matter was alive for about three years before the first Appellate Court. As aforesaid, the vital rights are involved and, therefore, the application cannot be dismissed *in limine* here. There is no reason to disbelieve present applicants in respect of the fact of ignorance about the filing of appeal. Taking into consideration the lenient view that is required to be taken in such matters, the delay deserves to be condoned, however, the inconvenience that would be caused to respondent No.1, who is contesting here, needs to be compensated in terms of money. Hence, the following order :-

ORDER

- I) The application stands allowed.
- II) The delay caused in filing civil application for bringing legal representatives of the appellant – original plaintiff on record, is

hereby condoned. Legal representatives of appellant – Vasant be brought on record.

III) Applicants to deposit cost of Rs.10,000/- (Ten Thousand only) in this Court within a period of 15 days.

IV) Amendment to be carried out within a period of one week after the payment of cost.

V) After the cost amount is deposited, it be given to respondent No.1.

VI) Registry to verify and register the second appeal.

[SMT. VIBHA KANKANWADI, J.]

scm