

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 CIVIL APPLICATION NO.3401 OF 2020
IN SAST/7466/2020
WITH
CA/3402/2020 IN SAST/7466/2020

ANKUSH SHAHAJI GHUGRE AND ANOTHER
VERSUS
MOTIRAM RAMJI PANDHARE AND OTHERS

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Mr. S.R. Dheple, Advocate for applicants

Mr. S.P. Katneshwarkar, Advocate for respondent Nos.2 to 4 and 7

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 01st DECEMBER, 2021

PER COURT :

1 Present application was filed for getting delay of 27 days condoned in filing Second Appeal. Notice came to be issued by order dated 15.07.2021 to all the respondents. Thereafter, notice of respondent No.6 was returned with remark that he had expired, and the report said that respondent No.7, who is his son, made a statement that his father expired on 19.02.2019. The First Appellate Court's Judgment was pronounced on 21.09.2019. That means, respondent No.6 had expired when the appeal filed by the present applicants was before the First Appellate Court, and therefore,

by order dated 30.08.2021 on the statement made by the applicants that the steps were taken, the matter was adjourned. Thereafter on 11.10.2021 on the oral request of the applicants last chance was given till 22.10.2021. However, inspite of giving sufficient chances when no steps were taken, by order dated 22.10.2021 this Court had dismissed the application as against respondent No.6 and it was also observed that whether the application can withstand in absence of respondent No.6 would be considered today.

2 In view of the order passed earlier by this Court, certified copy of the roznama of Regular Civil Appeal No.182/2014 has been shown. Perusal of the same would show that there was no compliance of Order XXII Rule 10-A of the Code of Civil Procedure by the respondents, especially the respondent No.7, who is the son of respondent No.6. Under such circumstance, the matter proceeded before the First Appellate Court and has been decided on 21.09.2019.

3 The learned Advocate appearing for the applicants submits that since his clients are illiterate and unable to understand what are the requirements, he is facing difficulty and, therefore, he had to contact the instructing Advocate to get the documents. He further submitted that even if steps are not taken in respect of respondent No.6 and the application stood dismissed against him; yet, the matter can proceed as the respondent No.6

had sold the property to the other contesting respondents and it is only the matter of 27 days delay in filing Second Appeal, which had occurred due to the illiteracy of clients.

4 Per contra, learned Advocate appearing for respondent Nos.2 to 4 and 7 submits that respondent No.6 was made party defendant as defendant No.6 as he was necessary party and, therefore, when a necessary party has expired and his legal representatives are not brought on record, the application cannot proceed.

5 As aforesaid, the roznama of the First Appellate Court would show that there was no compliance of Order XXII Rule 10-A of the Code of Civil Procedure and, therefore, it will not be a hurdle for the applicants. However, it is to be noted that the report of the Bailiff was received in this matter around 16.08.2021 and by order dated 30.08.2021 the fact was made known to the applicants regarding death of respondent No.6, so, the period of limitation would start from 30.08.2021. Period of 90 days would end by 28.11.2021. Yet, steps have not been taken. Though this Court had already dismissed the application against respondent No.6 on 22.10.2021; yet, the applicants could have brought his legal representatives on record or get the order set aside by 28.11.2021. In fact, respondent No.6 had expired on 19.02.2019 and, therefore, it was expected that the application should have

moved swiftly to collect the details.

6 Now, turning towards, whether the application can proceed further, it is to be noted that the suit, that was filed by the present applicants-plaintiffs, was for recovery of possession. They were claiming to be the owners of the suit property and were contending that the defendants in collusion had recorded their names to the revenue record regarding ownership and possession. The possession was claimed from all the defendants. It had come on record that initially one Shahaji Ghugre, who appeared to be the father of plaintiff No.1, sold the suit land to one Motiram i.e. defendant No.1 on 26.06.1973 to the extent of 03 H 60 R. Prior to that there was a sale deed in favour of one Rangubai Khawte in respect of 9 acres on 22.08.1972. It is then stated that there was mistake in the sale deed executed in favour of defendant No.1, which was discovered after death of Shahaji and, therefore, a Correction Deed was also made on 07.04.1978. Thereafter, defendant No.1 is stated to have sold half of the property to defendant Nos.3 and 4 on 24.06.1983 and after death of Rangubai her son defendant No.2 became owner of half portion of the land, which was purchased by Rangubai. Then defendant No.2 stated to have sold those lands by two registered sale deeds dated 25.05.1995 to defendant No.6 i.e. the present respondent No.6 and defendant No.7 in the year 1997. Thereafter, it

is stated that defendant No.6 sold the land to defendant No.5. He sold it to one Prayagbai. Prayagbai sold it to one Bhimabai. Now, this Prayagbai and Bhimabai are not party to the suit. With these things on record it is to be noted that the plaintiffs were claiming possession of the suit property from all the defendants. Therefore, the decree that was prayed was joint and several. Though the defendant No.6 had sold the property to defendant No.5, unless his transaction is assessed on the legal terms we cannot proceed further. Therefore, this Court cannot proceed in absence of the legal representatives of respondent No.6. Possibility of contradictory decree in his absence cannot be ruled out and, therefore, in view of the decision in **State of Punjab vs. Nathu Ram** [AIR 1962 SC 89] and **Bibijan and others vs. Murlidhar and others** [1995 (1) SCC 187], the application will have to be dismissed in its entirety. Accordingly, the application stands dismissed. Civil Application No.3402 of 2020 stands disposed of.

(Smt. Vibha Kankanwadi, J.)

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