

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**906 CIVIL APPLICATION NO.7252 OF 2021
IN SA/637/2015
WITH
CA/7261/2021 IN SA/638/2016**

SUKHDEO PARAJI RAUT AND OTHER
VERSUS
BHAGUBAI KARBHARI GORANE THROUGH LRS KARBHARI AND
OTHERS

...
Advocate for Appellants : Mr. Bedre Vinayak Sudhakar
Advocate for Respondents No.1A, 2A: Mr. A. N. Patil Barhate h/f S.P.
Chapalgaonkar
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 21-10-2021.

ORDER :

1. Office has submitted report regarding the calculation of days. It is stated that mistakenly it was given as 502 days when in fact it is 1009 days. Henceforth, the office should be careful in calculation of the delay.
2. Present applications have been filed for condonation of delay of 1009 days in filing applications for bringing the legal representatives of respondent No.1A on record. Original respondent No.1A expired on 26-07-2018. It has been contended that in the first week of July 2021 the applicant came to know about death of respondent No.1A. It is then stated that the legal heirs are residing at a different place and,

therefore, it took time to him to collect necessary documents. It is then also stated that on 27-07-2021 the Advocate for the respondent gave intimation regarding the legal heirs of deceased and then the application has been filed immediately.

3. Heard learned Advocate Mr. Bedre V. S. for appellants and learned Advocate Mr. S. P. Chapalgaonkar for respondents No.1A and 2A.

4. Though the learned Advocate Mr. S. P. Chapalgaonkar appearing for respondents No.1A and 2A has formal objection to take, yet it is to be noted that as per the case of the present respondents, the plaintiffs are the near relatives. Regular Civil Suit No.173 of 1991 was filed by respondents No.1 and 2 for partition and separate possession of their half shares in the suit property, whereas Regular Civil Suit No.279 of 1990 was filed by the present appellants for declaration of ownership and injunction. Both the suits were commonly decided. Regular Civil Suit No.279 of 1990 filed by the present appellants came to be dismissed whereas Regular Civil Suit No.173 of 1991 was decreed and the plaintiffs therein were held to be entitled to get partition and separate possession of their half share from the two lands which were allotted

to the share of defendants No.1 and 2 therein. The civil appeals filed by the present applicants/appellants challenging the both decrees i.e. two civil appeals Regular Civil Appeals No.144 of 2012 and 52 of 2005 came to be dismissed. When the parties are related to each other, it is hard to believe that the appellants would not have had knowledge about the death of one of the respondents. Yet, the fact remains that since even the decree in partition suit is under challenge, the right to sue survives. So also in another suit the appellants were seeking declaration of ownership and, therefore, it is necessary to bring the legal representatives of respondent No.1A on record.

5. Hence, the applications stand allowed and disposed of. The delay in filing applications stand condoned subject to deposit of cost of Rs.500/- (five hundred) in each application, to the High Court Legal Services Sub-Committee, Aurangabad, within a period of 15 days from today.

6. The necessary amendment be carried out within 15 days.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-