

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.3778 OF 2020
IN SAST/37577/2018

BABAN RAMCHANDRA MANDE DIED THR. LRS SHIVAJI BABAN
MANDE AND ORS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Mr. L. B. Pallod, Advocate for appellants.
Mr. B. V. Virdhe, AGP for respondents – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 25.08.2021

ORDER :-

. Present application has been filed for getting the delay of 2635 days condoned in setting aside the abatement of second appeal on account of death of original appellant No.1 – Baban Ramchandra Mande and bringing his legal representatives on record.

2. Present applicants are the original plaintiffs, who had filed Regular Civil Suit No.24 of 2008 before the learned Joint Civil Judge Senior Division, Ahmednagar for mandatory injunction against the respondents – defendants, thereby seeking direction to correct the record of rights and record the name of deceased Ramchandra to the extent of 1/2 portion of suit land i.e. Gut No.22/7 admeasuring 25 H 80

R now bearing Final Plot No.32/1 in Town Planning Scheme situated at village Chahurana Budruk, Tq. and Dist. Ahmednagar.

3. Heard learned Advocate Mr. L. B. Pallod for applicants and learned Advocate Mr. B. V. Virdhe for respondents - State. In order to cut short it can be said that both of them have made submissions in support of their respective contentions.

4. At the outset, it is to be noted that the said suit was filed for abovesaid reasons and after the evidence was led, the learned Joint Civil Judge Senior Division, Ahmednagar had decreed the suit on 04.10.2008. Original defendant No.3 – City Survey Officer filed Regular Civil Appeal No.106 of 2010 before the learned Principal District Judge, Ahmednagar. The said appeal came to be allowed on 15.11.2014 and the suit filed by the present applicants came to be dismissed. The applicants want to file second appeal, however, there was delay of 2635 days. Hence, present application.

5. Important point to be noted is that after the decision of the Trial Court on 04.10.2008, the appeal was filed on 13.03.2009. The present applicants – original plaintiffs were respondent Nos.1 to 9. They were served and they were appearing through Advocate. In the meantime, during the pendency of the said appeal before the first Appellate Court,

appellant No.1 – Baban Ramchandra Mande expired on 06.04.2012. The said fact about the death of Baban, who was respondent No.1 before the learned Principal District Judge, was never brought on record. Respondent Nos.2 to 9 had not complied with Order 22 Rule 10A of the Code of Civil Procedure. They cannot come with the case that they were not having knowledge about the death of Baban, therefore, there appears to be a deliberate suppression of fact. Further, after the decision by the first Appellate Court on 15.11.2014, they have not come to this Court immediately. They have filed the application on 24.06.2019. It has been tried to be contended that only Baban was looking after the matter during the pendency of civil appeal and then it is stated that the applicants came to know about the fact of allowing of the appeal recently. The said fact was orally informed to the applicants when they went to take copy of property card in City Survey Office. Important point to be noted is that all the respondents before the first Appellate Court were served with due summons and then they had appeared before the first Appellate Court. Even if the fact is taken that Baban was looking after the appeal, present applicant Nos.2 to 9 cannot say that they were absolutely not aware about filing of the appeal against them. At least after death of Baban, they ought to have kept track of the appeal. Further, it does not appear that they are laymen. They are not

coming from rural area. Merely by saying that one of them only was looking after the matter will not be sufficient ground to condone the delay. Further, when Baban had expired in the year 2012 and the appeal was pending before the first Appellate Court till 2014, it cannot be said that without the further instructions, which could have been given at the time of final hearing of the appeal, the Advocate representing them would have made submissions before the first Appellate Court. There appears to be suppression of fact by the applicants. Further, there is absolutely no explanation much less reasonable for the delay from 2014 to 2019. There is huge and inordinate delay which has not been properly explained. Even if we decide to take lenient view, yet, the delay is huge.

6. Though this Court may not be asked to go into the merits of the case, a cursory reference can still be made that the suit was filed with prayer of mandatory injunction only. The mandatory injunction is in the form of directing defendant Nos.1 to 3 to correct the record of City Survey No.22/7 and take entry about the half share of plaintiffs along with right to take water and to use the way. When the things were governing under the Maharashtra Land Revenue Code and there is appropriate procedure and alternative efficacious remedy is made available, then whether the suit was maintainable or not, was a

question. The learned first Appellate Court has held that the suit was not maintainable. Since the applicants have failed to give sufficient and reasonable ground to condone the delay, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

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