

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**903 CIVIL APPLICATION NO.6893 OF 2019
IN SA/191/2013
WITH CA/2755/2013 IN SA/191/2013
WITH CA/4250/2019 IN SA/191/2013
WITH CA/6894/2019 IN SA/191/2013
WITH CA/6895/2019 IN SA/191/2013**

**SONABAI TUKARAM GAVALI, DECEASED, THROUGH LRS SHIVAJI
TUKARAM GAWALI AND OTHERS**

VERSUS

**TATYA RAMJI SHINDE, DECEASED, THR. L.RS. GANGADHAR TATYA
SHINDE AND OTHERS**

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Mr. N.C. Garud, Advocate for applicants

Mr. D.R. Markad, Advocate for the respondent No.1

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 08th OCTOBER, 2021

ORDER :

1 Civil Application No.4250 of 2019 was the collective application to bring the legal representatives of applicant No.1, 1D and 1E on record. However, after the order was passed by this Court directing the applicants to prefer separate applications for each one for bringing legal representatives of each of the deceased persons since the days of the delay were different and

were required to be explained in a different way, the other three applications have been filed i.e. Civil Application Nos.6893 of 2019, 6894 of 2019 and 6895 of 2019.

2 In Civil Application No.6895 of 2019 it is contended that the original applicant No.1 i.e. the appellant No.1 has expired on 11.01.2015 and there is delay of 1473 days in bringing her legal representatives on record. In Civil Application No.6893 of 2019 legal representatives of respondent No.1E, who expired on 25.04.2004, are to be brought on record and there is delay of 5387 days. In Civil Application No.6894 of 2019 legal representatives of applicant No.1D, who expired on 24.11.2018, are to be brought on record and there is delay of 61 days.

3 Heard learned Advocate Mr. N.C. Garud for applicants and learned Advocate Mr. D.R. Markad for the respondent No.1.

4 It has been vehemently submitted on behalf of the applicants that it is necessary to bring all those legal representatives on record. In fact, applicant No.2 is also the legal representative of original applicant No.1 and he is already on record, however, the legal representatives were not having knowledge that their names will have to be included and they will have to be brought on record in the litigation. They were under impression that the

applicant No.2 who is already on record will take care of the matter. There is no intentional delay and laches on the part of the applicants. It was also pointed out that already the present applicant No.1 had filed suit for partition and separate possession i.e. Regular Civil Suit No.144/2006 before 4th Joint Civil Judge Senior Division, Ahmednagar and it came to be decreed on 31.08.2012. Yet, when the present respondents filed Regular Civil Suit No.782/1989, it was held that the present applicants failed to prove that already partition had taken place between them and the plaintiffs therein i.e. the present respondents and the defendant No.1 therein i.e. present applicant No.1 became exclusive owner of half portion of the suit block No.52. The said suit came to be partly decreed on 04.05.2005 by 3rd Joint Civil Judge Junior Division, Ahmednagar. The appeal that was filed by the present applicants was dismissed by District Judge-6, Ahmednagar on 29.06.2012. Therefore, there are two contrary Judgments in respect of the rights over the suit property. This will have to be resorted to and, therefore, the legal representatives are necessary to be brought on record.

5 Per contra, the learned Advocate for the respondent No.1 strongly objected the applications and submitted that there is absolutely no explanation for the delay. In fact, Sonabai expired on 11.01.2015 and applicant No.2 being the son had knowledge about her death; yet, did not

take any steps till 20.04.2019 or even if we consider Civil Application No.4250 of 2019, on which this Court gave direction for bringing three separate applications on 26.03.2019, there is absolutely no explanation for the delay of these four years.

6 At the outset, it is to be noted that the applicant No.2 is the son of original applicant No.1. Merely because he was already on record that does not mean that the period of limitation in bringing the legal representatives of the applicant No.1 on record will not start. It cannot be stated that he was representing the entire estate of the applicant No.1, because the applicant No.1 had contended before the Trial Court, in this case, that she has become exclusive owner of the half of the portion. No doubt, the applicant No.2 was also party to the suit but he was in a different capacity. When Sonabai i.e. applicant No.1 expired on 11.01.2015, her legal representatives were ought to have been brought on record within the limitation or at the most, we can say that within a reasonable period, by giving a plausible explanation. The delay of 1473 days is inordinate and huge.

7 Applicant No.1E Bhivsen was the son of Sonabai, who appears to have pre-deceased Sonabai, as it is stated that he expired on 25.04.2004. It has been rightly contended that till death of Sonabai there was no question of

bringing Bhivsen into the litigation and, therefore, even for him the delay would be of 1473 days and not 5387 as calculated by office of this Court. Only after Sonabai's death Bhivsen will come in picture and since he was pre-deceased, Bhivsen's legal representatives get some interest to contest the matter. If we see the contents of the application, it is then stated that the legal representatives of Bhivsen had no idea that they were required to be brought on record. In fact, the application does not give any kind of explanation as to why no move was made by applicant No.2 to bring all the legal representatives on record. When his explanation is not coming forward, we cannot go to the explanation by Bhivsen's legal representatives. Definitely, death of all the applicants i.e. applicant Nos.1, 1D and 1E was within the knowledge of applicant No.2. Same is the case with legal representatives of applicant No.1D. Applicant No.1D expired on 24.11.2018. Again the same reason is given, which cannot be considered at all, in view of the fact that the applicant No.2 had every kind of knowledge.

8 Another fact, that is, required to be noted is that this Court by order dated 09.06.2017 had abated the appeal, in view of death of applicant No.1. In spite of this order, as aforesaid, Civil Application No.4250 of 2019, was filed after the period of two years. There is absolutely no explanation as to why no steps were taken since 09.06.2017, that is, after the order of

abatement was passed. Under such circumstance, the explanation that the legal representatives were not having knowledge will not be relevant. When already the order was passed regarding abatement and it will have to be presumed that the applicant No.2 had the knowledge about the said order, immediate action was contemplated. Now, in view of the fact that there is huge and inordinate delay, which has not been explained at all properly by the applicant No.2, who is one of the legal representatives on record, Civil Application Nos.6893 of 2019, 6894 of 2019, 6895 of 2019 and 4250 of 2019 will have to be rejected.

9 In consequence of the fact that the appeal stood abated as against applicant No.1 by order dated 09.06.2017 and the applications to bring legal representatives on record have also been now rejected, it is then required to be seen, whether we can proceed with the matter. The suit filed by the present respondents i.e. Regular Civil Suit No.782/1989 was for partition and separate possession of separate share as well as perpetual injunction. The decree that was passed in the said matter was joint and several, as against present applicants, who were the original defendant Nos.1 and 2. Original plaintiff Gangadhar and defendant Nos.3 to 11 were held to have 5/8th share in the suit property. We cannot proceed in absence of any of the sharers. Therefore, in view of the decision in *State of Punjab vs. Nathu*

Ram [AIR 1962 SC 89], Bibijan and others vs. Murlidhar and others [1995 (1) SCC 187], Annabai Devram Kini and others vs. Mithilal Daisangar and others [2002 (3) Mh.L.J. 507] and Gajanan Namdev Kale vs. Sakhubai Bhimaji Kharat (died) through LRs and others [2012 (4) Mh.L.J. 470], the appeal stands abated as a whole and the Second Appeal deserves to be dismissed. Accordingly, it is dismissed. Civil Application No.2755 of 2013 for stay stands disposed of.

(Smt. Vibha Kankanwadi, J.)

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