

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

**CIVIL APPLICATION NO. 1144 OF 2020
IN
SECOND APPEAL ST. NO.627 OF 2020
WITH
CIVIL APPLICATION NO.5512 OF 2021
CIVIL APPLICATION NO.1145 OF 2020**

1. Abasaheb Sonba Gadage
and Anr. **= APPLICANTS**

VERSUS

1. Surekha Popat Gawali
and Ors. **= RESPONDENT/S**

Mr.SS Bora, Adv. h/for Mr.VS Badakh,Advocate for Applicants;

Mr. Mangesh Jadhav,Adv. H/ for Mr. AS Sawant, Adv. For
Respondent Nos.1, 2-A, 2-B, 4-B, 4-C, 4-D, 5 and 6;

Mr.JR Patil, Adv. For Resp.Nos. 3, 7 to 10 (Absent)

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 3rd August, 2021.

PER COURT :-

1. Present application has been filed for getting
delay of 1766 days condoned in filing the Second Appeal.

2. Heard learned Advocates appearing for the
respective parties. In order to cut short, it can be stated
that both of them have made submissions in support of their
respective contentions.

3. Present applicants are original defendant Nos.10
and 11. Present Respondent No.1 – original plaintiff had

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filed Regular Civil Suit No.19/2003 for partition and separate possession along with declaration and perpetual injunction before Joint Civil Judge, Senior Division, Parner, District Ahmednagar. The said suit came to be decreed on 25.8.2008. Present applicants-appellants had thereafter filed Regular Civil Appeal No.265/2008, challenging that decree before the learned Principal District Judge, Ahmednagar. The appeal was allowed. The impugned judgment and decree passed by the learned Trial Judge was set aside and replaced. However, the Regular Civil Suit was, in fact, decreed in the appeal itself. Even the shares were maintained. But it was clarified that the present appellants are, as far as practicable, entitled in equity to retain the house property and the land purchased, which shall be allotted to share of deft.No.2 at the time of final decree proceedings. Now, original deft.Nos.10 and 11 want to challenge the said decree passed by the learned Principal District Judge, whereby the decree passed by the Trial Judge was modified. However, as aforesaid, there is the delay. Hence, the present application.

4. The applicants are contending that if we peruse the operative part of the judgment of the learned first Appellate Court, then it says that the appeal is allowed.

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Even the judgment and decree passed by the Trial Judge, has been set aside and then replaced and, therefore, they were under impression that they are not required to file an appeal. It was so informed to them by their Advocate and it was told by their Advocate that they should not worry. But, during the course of the execution proceedings, when they realized that they are likely to loose possession of their property, then they have been advised to challenge the judgment and decree before this Court. It is stated that in the course of execution, Tahsildar, Parner had passed an order dated 18.11.2019, thereby finalizing the partition chart, though the applicants had raised an objection for the same. They had preferred RTS Appeal No.310/2019 against the said partition chart and it is pending. Since their rights and interest would be affected, they want to challenge the judgment and decree passed by the leaned First Appellate Court. The delay is not intentional.

5. At the outset, it can be seen that the applicants are not coming with a case that they are not aware about the decision in the First Appeal. Now, they want to blame their Advocate, who had advised them not to file the Second Appeal. If we consider the operative part, it is clear, though it is stated that the appeal is allowed, that the judgment and

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decree is set aside but replaced. By replacing also, further part is clearly stated. On the contrary, something in their favour has been mentioned that as far as practicable, the house property and the land purchased by the applicants, should be given to the share of their vendor. Now, according to the applicants, the partition chart has been so prepared that they would loose the possession. Here, it is to be noted that there are so many parties to the proceedings. 1/10th share has been granted to the plaintiff and other co-sharers. It should be for the executing authority to consider as to how the said partition should be effected. But, certainly, as per the decree, the equity should be borne in mind. In that process, if the appellants are going to loose the possession of certain portion, then nobody can help for the simple reason that if they have purchased more than the share of deft.No.2, then they are bound to loose that portion. When even after knowing the decision in their First Appeal, under some impression, if the applicants have kept mum for so many days, then this Court cannot help them. Further, they have already filed the appeal, challenging the said partition chart and it is pending. They cannot resist the shares in the suit property to get their share. Their contention about the fact that they are bonafide purchasers for value without

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notice, has been rejected by both the Courts below, which is mainly the fact. In the circumstances, the application for condonation of delay deserves to be rejected and same is accordingly rejected. Pending Civil Applications stand disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV