

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.312 OF 2021

Shivappa Lakappa Koli (Kolkar) ..Appellant
Versus
Jiwappa Lakappa Koli (Kolkar) & Anr. ..Respondents

Mr. Kuldeep U. Nikam, for the Appellant.

CORAM : NITIN W. SAMBRE, J.

DATE : 10th OCTOBER, 2022

PC.

1. The suit filed by the respondent for partition and separate possession being Regular Civil Suit No.384 of 2012 came to be decreed on 18th December, 2013.

2. The present appellant/defendant No.1 feeling aggrieved preferred First Appeal which was delayed by almost three years four months and a day. As such, an application for condonation of delay was taken out which was rejected vide order impugned dated 8th November, 2019 passed by Principal District Judge, Sangli. As such, this Second Appeal.

3. Contentions of Mr. Kuldeep Nikam, counsel appearing for the appellant are, the appellant/defendant No.1 has acquired part of the suit property out of his independent income. He would

further urge that as the suit summons were not properly served on the appellant, he was unable to defend himself. It is further claimed that the Court below has failed to conduct itself in accordance with the mandate provided under Rule 17 of Order V of the CPC, as the suit summons were not properly received by the appellant. His further contentions are, in suit for partition, since the interest of the parties i.e. plaintiff and defendant is common, this Court must consider equity in favour of the appellant.

4. I have appreciated the said submissions.

5. The suit for partition and separate possession came to be decreed on 18th December, 2013. The suit summons was appeared to have been served on the appellant vide Exh.12 and the suit was proceeded *ex-parte* against the appellant on 24th July, 2013.

6. I have perused the bailiff report which is drawn in terms of Order V Rule 17 of the CPC. The bailiff had been to the residence of the appellant along with village Kotwal. When bailiff offered the suit summons, the daughter-in-law informed the bailiff that the appellant is not available. As such, the suit summons was affixed on the door of the house.

7. The fact remains that the report drawn by the bailiff in categorical terms speaks of name of the daughter-in-law of the appellant. The fact that the village Kotwal was accompanying the

bailiff and pasting of suit summons on the front door of house of the appellant.

8. The aforesaid bailiff report in categorical terms, in my opinion, duly satisfies the very requirement as provided under Order V Rule 17 of the CPC.

9. Apart from above, the application for condonation of delay on one side claims that the suit summons were not served and on the other hand it is claimed that the appellant who is in advanced age is indisposed and as such was unable to attend court proceedings. The fact remains that even if because of his advanced age appellant was unable to attend proceedings, there was no occasion for the bailiff to record in the report that appellant was not available at home as per the information of his daughter-in-law.

10. The fact remains that along with application for condonation of delay neither the appellant sought examination of the daughter-in-law whose name is specifically referred in the suit summons report drawn by the bailiff nor the appellant has sought cross-examination of the village Kotwal or bailiff. In this view of the matter, the Second Appeal is *sans* any question of law.

11. As such, the Second Appeal stands dismissed.

[NITIN W. SAMBRE, J.]