

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

**CIVIL APPLICATION NO. 407 OF 2018
IN
SECOND APPEAL (ST) NO. 3410 OF 2018**

Shri Kedari Bhiva Bhosale ...Applicant
vs.
Sou. Krushnabai Shripati Devare and
Other ...Respondents

**ALONGWITH
INTERIM APPLICATION NO. 2732 OF 2022
IN
SECOND APPEAL (ST) NO. 3410 OF 2018**

Shri Kedari Bhiva Bhosale ...Applicant
vs.
Sou. Krushnabai Shripati Devare ...Respondent

**ALONGWITH
INTERIM APPLICATION NO. 2734 OF 2022
ALONGWITH
INTERIM APPLICATION NO. 2735 OF 2022
ALONGWITH
CIVIL APPLICATION NO. 408 OF 2018
IN
SECOND APPEAL (ST) NO. 3410 OF 2018**

Shri Kedari Bhiva Bhosale ...Applicant
vs.
Sou. Krushnabai Shripati Devare and
Other ...Respondents

Mr. Anand S. Patil - Advocate for the Applicant
Mr. Manoj A. Patil - Advocate for the Respondent No. 1.

CORAM : S. M. MODAK, J.

DATE : 12th AUGUST, 2022

P. C. :-

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1. Heard learned Advocate for the Applicant and learned Advocate for the Respondent No. 1.
2. Respondent Nos. 2 and 3 though served have not appeared. There are various interim Applications for bringing the legal representatives of the deceased Respondents from some of the Respondent Nos. 4 to 18.
3. Today it is submitted that Applicant do not want to prosecute the proceedings against Respondent Nos. 4 to 18. The reason offered is that there were formal parties impleaded by present Respondent No. 1- plaintiff. Even learned Advocate for the Respondent No.1 – Plaintiff submitted that they have been joined as formal parties because their names appeared on 7X12 extracts and in fact they do not belong to the family of which the contesting parties are the members.
4. In view of that the Applicant is permitted to delete the Respondent Nos. 4 to 18 from the array of the parties on the application so also title clause of the memo of the Second Appeal. Necessary amendment be carried out within two weeks. It is done at the risk of the Applicant. There is delay of 27 days in preferring the Second appeal. The present applicant

was defendant no. 4 before the trial Court. Partition decree was passed and it was confirmed by the First Appellate Court.

5. The prayer for condonation of delay is opposed on behalf of Respondent No. 1-Plaintiff.

6. For the reasons stated in para nos. 3 to 5 of the Application, the delay is condone. The Civil Application No. 407 of 2018 is allowed in terms of prayer clause 'a'.

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7. Heard.

8. This is Second Appeal filed by the Defendant No. 4 against the partition decree thereby declaring the shares of the parties. Present Respondent No. 1 was the plaintiff and the defendant Nos. 1 and 2 are the sisters of the Plaintiff who are Respondent Nos. 2 and 3.

9. Issue notice before admission, returnable on 23/09/2022.

10. Learned Advocate Shri Manoj Patil waives notice for Respondent No. 1. Notice only be issued to Respondent Nos. 2 and 3. Hamdast is granted. Appellant is permitted to serve Respondent Nos. 2 and 3 by private service and affidavit be filed.

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11. It is submitted that precept is sent to the Collector. The Revenue Authorities have started the process of partitioning the suit land.

12. Issue notice to the Respondent Nos. 1 to 3 returnable on 23/09/2022. Hamdast is granted. Applicant is permitted to serve the Respondent Nos. 2 and 3 by private service and affidavit be filed.
13. Learned Advocate Shri Manoj Patil, waives notice for Respondent No. 1.
14. Both the parties are directed to apprise the Court about the status of that proceedings.
15. Matter be kept on 23/09/2022.

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16. All these applications are for bringing Legal representatives of concerned deceased Respondents.
17. Today, the Applicant has submitted that he do not want to prosecute the Appeal against Respondents except Respondent Nos. 1 to 3.
18. In view of that all these Applications have become infructuous and disposed of.
19. This matter is mentioned in the second half. As said earlier the execution is pending with revenue authorities and their procedure is going on. There is a procedure of issuing possession notice after the land is

demarcated by the revenue authorities as per the shares fixed by the Civil Court. The Appellant is at liberty to move in case notice to handover possession is issued or in any other urgent eventuality.

20. In spite of this observation learned Advocate for the Appellant insisted that statement of learned Advocate for Respondent No.1 that they will not proceed further in execution be recorded. To that learned Advocate for Respondent No.1 is not ready. Hence not recorded.

[S. M. MODAK, J.]