

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.159 OF 2022

Prakash s/o Laxman Bharti
Vs.
Dipak s/o Laxman Bharti and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. D. Dangore, Advocate for appellant.

CORAM : AVINASH G. GHAROTE, J.
DATE : 21/09/2022

Civil Application (CAS) No.979 of 2022 and
Civil Application (CAS) No.980 of 2022

1. Since notices are yet to be issued, Civil Application No.979 of 2022 which seeks setting aside of abatement and bringing legal heirs of deceased appellant on record and Civil Application No.980 of 2022 seeks condonation of delay on account of the appellant having passed away due to Covid – 19 on 20.5.2021, the applications are hereby allowed.

2. The legal heirs be brought on record, forthwith.

3. The Civil Applications are disposed of.

Civil Application Stamp No.556 of 2021

1. Civil Application Stamp No.556 of 2021 seeks condonation of delay in filing of Second Appeal.

2. The delay is of 87 days and is attributed to the Covid – 19 pandemic, considering which, the same is

condoned.

3. The application is allowed and disposed of.

SECOND APPEAL NO.159 OF 2022

1. Heard Mr. Dangore, learned counsel for the appellant.

2. The appeal challenges the judgment and decree passed by the learned Appellate Court, dated 27.2.2020, in Regular Civil Appeal No.262 of 2015, whereby the judgment and decree dated 13.3.2015 passed by the learned trial Court in Regular Civil Suit No.46 of 2003, directing partition and separation possession of the land of Survey No.1, admeasuring 3.34 H.R. has been quashed and set aside and the suit for partition came to be dismissed on the ground that the land in question was self-acquired property of late Laxman Bharti. It is however a matter of record, that the plea raised by the present respondent nos.2 and 3, who were the original defendant nos.4 and 5 in Regular Civil Suit No.46 of 2003, that a gift deed was executed by late Laxman in their favour on 10.1.2002, in respect of the property in question, has been answered in the negative by the both the Courts below holding that the deed of gift, was never placed on record (paras 20 and 21 of learned trial Court judgment at page 50 and point No.3 of the learned Appellate Court judgment page 23), in view of which, the claim by the respondent nos.2 and 3 based upon the gift deed dated 10.1.2002 did not

survive, and the finding regarding the Will dated 22.2.1996, claimed to have been executed by Laxman in favour of Dipak the defendant no.3 in Regular Civil Suit No.46 of 2003 (respondent herein), and the claim based upon the same was barred by limitation and the bequest was not proved, would indicate that late Laxman died intestate, as a result of which, the succession would be governed by the Hindu Succession Act, as a result of which, issue notice to the respondents on the following substantial question of law.

“Whether in absence of the claim on account of the gift deed dated 10.1.2002 and the will dated 22.2.1996 having being proved, what is the mode in which the succession to the property of Late Laxman would be governed.”

3. Notices is made, returnable on 6.10.2022.
4. The appellant to serve the respondents by all modes permissible in law. Hamdast granted.
5. Mr. Dangore, learned counsel for the appellant shall file the paper book as well as all exhibited documents on record, since it is contended that the gift deed dated 10.1.2002 is claimed to have been executed and registered by Laxman, during his life time in favour of his grand-sons Dinesh and Avinash, the defendant nos. 4 and 5 in Regular Civil Suit No.46 of 2003.

JUDGE