

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.11278 OF 2021 IN SAST/4245/2021
WITH CA/11276/2021 IN SAST/4245/2021
WITH CA/9861/2023 IN SAST/33652/2021
WITH CA/6345/2022 IN SAST/33652/2021

PRAKASH PANDURANG TOMPE DECEASED LRS. SACHIN PRAKASH
TOMPE
VERSUS
MOHD. ABDUL MUGHANI MOHD.ADBUL GANI FAROOQUI
AND OTHERS

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Advocate for Applicants : Mr. Suraj R. Bagal
Advocate for Respondent No.1 and GPA for respondents No.2 and 3
: Mr. Rajendraa Deshmukkha, Senior Advocate along with Ms. R. R.
Jaiswal instructed by Advocate Mr. Avinash D. Hande
Advocate for Respondent No.4 : Mr. U. B. Bilolikar
Advocate for Applicant in CA/9861/2023 : Mr. R. V. Gore

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CORAM : S. G. MEHARE, J.

DATE : 24-08-2023

PER COURT :-

1. Heard the learned counsel for the parties.
2. The present applicant is the sole legal heir of the original defendant No.2, who died during the pendency of the appeal before the learned Ad-hoc District Judge-1, Nanded. Thereafter, the applicant was brought on record as his legal heir. The original defendant No.2, before his death and during the pendency of the appeal, had sold the suit property to one Ambulgekar. However, he was not on record as the said transaction was not brought to the

notice of the Court. Therefore, the appeal proceeded in the absence of the present applicant. On 02.01.2018, the appeal was allowed, and the decree was passed in favour of the present respondents/original plaintiffs.

3. The learned counsel for the applicant submits that after the death of his father, who was original defendant No.2, the appellant shifted to Nilanga from Nanded for business purposes. Then, he was not in contact with his lawyer. He also did not know that before he was brought on record in the appeal as a legal heir, his father had already sold the suit land to one Ambulgekar. He did not know about the impugned judgment.

4. Ambulgekar has also sold the suit land to one Laxmikant Ramesh Rayewar. The Government acquired the major portion of the suit land for the road widening, and the compensation was awarded to said Laxmikant Rayewar. The Acquiring Authority sent a notice to Laxmikant on 27.11.2019 and asked him to remain present with documents on 03.12.2019. When he went to the office of the Land Acquisition Authority, he learnt that the amount could not be disbursed because present respondents No.1 to 3/original plaintiffs had raised an objection in April 2019. Laxmikant searched for the address of the applicant, but due to the COVID-19 pandemic, he could not contact the applicant. In November 2020, he could contact the applicant and disclose the

facts about passing the impugned judgment and decree. A copy of the notice dated 27.11.2019 is annexed with the application. He immediately contacted the lawyer representing him in appeal and obtained the certified copies on 24.12.2020. Thereafter, due to the COVID-19, some delay was caused. The delay was not deliberate. The applicant has a good case on merit. It was an attempt to grab the property of the present applicant. Besides that, there are other grounds for delay. Hence, the application may be allowed.

5. The learned counsel for the respondents/plaintiffs would submit that the lawyer representing the appellant in the first appeal had pleaded that some portion of the land has also been acquired for road widening, which indicates that he made the statement on the instructions of the present applicant. The case that no communication between him and his learned counsel falsifies the ground for delay condonation. He also argued that when the fact that when the suit field was sold to one Ambulgekar, the appellant was the consenting party. So, he knew the said transaction, but he deliberately did not disclose the same to anyone.

6. It appears that the suit property was sold to Ambulgekar during the lifetime of the father of the applicant. The sale deed reveals that the deceased Prakash had two sons, but the appeal memo reveals that one of them was only brought as a legal heir.

Everybody kept mum on this fact. There appears material to believe the applicant that the delay is not intentional and deliberate. The fact that he shifted to Nilanga is also not disputed. The subsequent purchaser had sold the suit property to a third party, namely, Laxmikanth Rayewar. Laxmikanth Rayewar had received a notice from the land acquisition authority, and then the present applicant woke up and approached this Court. Considering his explanation about getting knowledge, that cannot be disbelieved at once. Blaming the lawyer for not intimating the litigant is not a good ground to condone the delay. However, there are other circumstances in the matter to believe that the delay is not deliberate. Hence, the order:-

- i) Civil Application No. 11278 of 2021 is allowed.
- ii) Delay in preferring the second appeal stands condoned.
- iii) Second Appeal be registered, accordingly.
- iv) Parties are at liberty to make appropriate decisions about the brother of the present applicant, who is admittedly a legal heir of deceased defendant No.2 Prakash Pandurang Tompe.
- v) List the appeal after its registration on 28.09.2023.
- vi) Till then, *interim* relief will continue.

**(S. G. MEHARE)
JUDGE**