

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

956 CIVIL APPLICATION NO.3828 OF 2021
IN AOST/6196/2021 WITH CA/3829/2021 IN AOST/6196/2021

RAJANIKANT MADHAV KHANDAGALE THR GPH SANTOSH MADHAV
KHANDAGALE AND ORS
VERSUS
LATABAI SHAMRAO SALVE AND ORS

...
Advocate for Applicants : Mr. Rahul G. Joshi
Advocate for Respondent Nos.1, 2, 5, 6 : Mr. M. R. Sonawane

...
CORAM : ARUN R. PEDNEKER, J.
DATE : 09th June, 2023

PER COURT :

1. Heard the learned Advocate appearing on behalf of the appellants/applicants.
2. The Civil Application No.3828 of 2021 is filed for condonation of delay of 128 days in filing appeal.
3. For the reasons stated in the application, the delay condonation application is allowed and disposed of.
4. The learned Advocate appearing on behalf of the appellants/applicants submits that the error is committed in the pleadings that the plaintiffs profess christian religion and the original plaintiffs submit that they belong to Hindu, Scheduled Caste. Thus on the basis of the error which was committed by the plaintiff, the Appellate Court has proceeded to pass an order that the Hindu Succession Act is not applicable but the Indian Succession Act is applicable, to the plaintiffs.

5. The Appellate Court has held that the Indian Succession Act is applicable to the plaintiff and there is no concept of existence of Joint Family Property or ancestral property for Christians. As such, the Appellate Court set aside the order passed by the Trial Court and remitted the matter back to the Trial Court for reconsideration.

6. The learned Advocate for the plaintiff/appellants submits that the plaintiff has committed error in the pleading consequently the erroneous Judgment is passed by the Appellate court. The learned Advocate further submits that he would move an appropriate application for amendment in the pleadings before the Trial Court in the remanded matter and that the said application be decided by the Trial Court on merits.

7. The learned Advocate appearing for the respondents has no objection as far as filing of the application before the Trial Court is concerned. If such an application is moved before the Trial Court, the Trial Court would decide the application on its own merits.

8. The learned Trial Court is directed to decide the remanded case expeditiously. In view of the above, Appeal from Order and pending applications are disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.