



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

20 SECOND APPEAL NO. 74 OF 2023
WITH
CIVIL APPLICATION NO. 3209 OF 2023
IN SA/74/2023

VENKAT SANGANNA MOMALE AND OTHERS
VERSUS
VEDANT VENKAT MOMALE AND OTHERS

...
Adv. for Appellants : Ms. P. G. Sontakke h/f Mr. Sontakke G. K.
Advocate for Respondent Nos.1 to 3 : Mr. Murkute J. M.
...

CORAM : S. G. MEHARE, J.
DATE : 18.12.2023

PER COURT :-

1. Heard the learned counsel for the appellants/original defendants and the learned counsel for the respondents/original plaintiffs.

2. The appellant has two wives and four children. The first wife along with her daughter and son had filed a suit for partition. The suit against the present appellants proceeded *ex-parte*. Then the appeal was preferred, but it was delayed by five months and eight days. The First Appellate Court did not convince that the delay was caused due to negligence of the lawyer representing them. The Court come to the conclusion that the grounds for the delay were not convincing and not

plausible. Hence, dismissed the application by the impugned order.

3. Learned counsel for the appellants would submit that it was a sheer negligence of the lawyer who did not attend the case sincerely. The Court of first instance has apparently committed error of law in determining the shares. The appellant, his second wife and her children were not granted any share. Though the children were illegitimate for the purpose of argument they were entitled to the share. The law is well settled that for the mistakes or wrongs of the others, the third person should not suffer.

4. Learned counsel for the respondents opposed the application contending that lawyer is a soft target for seeking the relief. The appellants were not diligent in contacting the lawyer. But, he did not oppose the various pronouncements of the Supreme Court about the lenient view in condonation of delay.

5. Whether the delay was liable to be condoned, is the question of law.

6. The legal issue whether the illegitimate child is entitled to the share in the ancestral property has been recently decided by the Supreme Court in the case of *Revanasiddappa and another Vs. Mallikarjun and others ; (2023) 10 Supreme Court Cases 1*. The substantial question about the rights of the parties was required to be decided. Not completely disagreeing with the findings recorded by the learned Ad-hoc District Judge-1, Udgir, the Court is of the view that considering the various pronouncement of the Supreme Court, the rights of the parties to contest the suit on merit should not be affected.

7. Considering the facts of the case legal issues involved in the case, the Court is of the view that lenient view may be taken to condone the short delay. It was suit for partition in which all parties are plaintiffs and defendants. There should be justice with all. The question of law whether the delay is liable to be condoned is answered in affirmative. However, the opponents have been unnecessarily harassed. Hence, it is a fit case to compensate them by way of costs. Hence, the following order :

ORDER

- (i) The appeal is allowed subject to costs of Rs.5,000/- (Rupees Five Thousand only) to be

paid to the present respondents before the First Appellate Court.

- (ii) The impugned judgment and order of the learned Ad-hoc District Judge-1, Udgir passed in Civil M.A. No.43 of 2022, dated 01.02.2023 is set aside.
- (iii) Civil M.A. No.43 of 2022 is allowed.
- (iv) The Registry of the District Court, Udgir is directed to register the appeal according to law.
- (v) The parties to appear before the First Appellate Court on 22.01.2024.
- (vi) Civil Application stands disposed of.

(S. G. MEHARE, J.)

...

vmk/-