

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.492 OF 2022
WITH
CIVIL APPLICATION NO.15039 OF 2022 IN SA 492 OF 2022
WITH
CIVIL APPLICATION NO.15038 OF 2022 IN SA 492 OF 2022**

1. Vrandawani Hanumant Adsule,
age 60 yrs, Occ. Household and Agri,
R/o Arni,Tq. & Dist. Osmanabad
Appellant.
(orig. deft no.2)

Versus

1. Sanjay Balu Adsule,
age 35 yrs, Occ. Agri,
R/o Arni, Tq. & Dist. Osmanabad.
2. Kamalbai Balu Adsule,
age 70 yrs, Occ. Household,
R/o as above.
3. Sunita Balu Adsule,
age 30 yrs, Occ. Household,
R/o Arni,Tq. & Dist. Osmanabad

After Marriage
Sunita Dhanraj Kamble,
age 30 yrs, Occ. Household,
R/o Bhangar Galli, Latur.
Tq & Dist. Latur

4. Phulabai Pralhad Khune,
age 41 yrs, Occ. Housheold,
R/o Chorakhali,
At present Pathanwadi, Latur.
Tq. & Dist. Latur
(orig plaintiffs)

5. Hanumant Yedba Adsule,
age 62 yrs, Occ. Agri,
R/o Arni, Tq. & Dist Osmanabad.
6. Limbabai Kumar Waghmare,
age 42 yrs, Occ. Household,
R/o Samta Nagar, Behind Civil Hospital,
Kallam, Dist. Osmanabad.
7. Bhagabai Bhagwat Waghmare,
age 45 yrs, Occ. Household,
R/o as above.
8. Ganpat Yeshwant Adsule (died),
nearly 7-8 year ago.
9. Shivaji Yeshwant Adsule (died)
approximately 10 years ago.
10. Shankar Yeshwant Adsule,
age 67 yrs, Occ. Agri,
R/o Arni.
11. Tukaram Yeshwant Adsule,
age 65 yrs, Occ. Agri,
R/o as above.
12. Ramkrishna Yeshwant Adsule,
age 63 yrs, Occ. Agri.
R/o as above.

Respondents
(orig deft Nos.1 & 3 to 9)

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Mr. V. V. Ingle Advocate for appellant.

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CORAM : S.G. CHAPALGAONKAR, J.
DATE : 17th AUGUST, 2023.

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ORAL JUDGMENT :-

1. By this appeal, the appellant impugns the judgment and order dated 13.2.2019 passed by the Adhoc District Judge-2, Osmanabad in Civil Misc. Application No.57 of 2017 by which the

prayer to condone the delay of 11 years 2 months and 6 days caused in filing the appeal against the judgment and decree dated 18.3.2006 in RCS No.314 of 2004 has been rejected.

2. Learned advocate appearing for the appellant would submit that the appellant was not having knowledge of the decree passed in RCS No.314 of 2004. He would submit that it is an ex-parte decree. Summons of suit was served upon the husband of appellant, who is in collusion with the plaintiffs. He would submit that the suit land has been purchased by the appellant under the registered sale-deed bearing no.3697 dated 1.3.2001 from one Pandurang Ramchandra Garad and she is exclusive owner of that land. However, said property shown to be the coparcenary property and the decree for partition has been obtained behind her back. Learned advocate appearing for the appellant further submit that only when the respondents initiated execution of the decree and obstructed her possession, she could get knowledge of such decree and then filed appeal alongwith application for condonation of delay before the District Court, at Osmanabad. He would submit that the Adhoc District Judge, Osmanabad without considering the aforesaid aspects of the matter rejected the prayer seeking condonation of delay. As such, he urged to allow the appeal by setting aside the impugned judgment and order dated 13.2.2019.

3. I have considered the submissions advanced by the learned advocate appearing for the appellant. It is true that the term “sufficient cause” has to be liberally applied when it comes to dispute regarding immovable property and parties are litigating for decision of

their rights through the Courts. However, it is necessary to guard the deliberate, grossly negligent or intentional delays in filing the proceedings. In present case, the appellant is seeking to condone inordinate delay of 11 years 2 months and 6 days caused in filing the appeal against a decree for partition and separate possession. Apparently, in the Misc Civil Application No.57 of 2017 filed before the District Court at Osmanabad, the applicant contended that the decree in the suit is collusive. She could get knowledge of the decree on 14.5.2017 when the respondents entered into land and claimed their share in it. Thereafter, she approached the Appellate Court. Apparently, the statement in the application was found to be factually incorrect. It is a matter of record that she had filed Misc. C.A. No.69 of 2010 before the Trial Court for setting aside the exparte decree. After prosecuting the said application for about 5 years by order dated 14.7.2015 the application came to be dismissed for want of prosecution. The applicant and her husband were applicants in that proceeding. After two years of dismissal of that application, appeal with Misc. Civil Application for delay condonation is filed before the District Court. Appellant suppressed the fact of prosecuting M.C.A. before the Trial Court for setting the exparte decree. Apparently, the applicant had knowledge of exparte decree since the year 2010. The learned District Judge has recorded reasons that the applicant is trying to make out imaginary and frivolous date of knowledge and also giving false and unacceptable reasons for the delay. No fault can be found in the reasoning adopted by the learned District Judge in the impugned order. Hence, no substantial question of law arises for consideration in this appeal. The appeal is hereby dismissed. In view

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SA 492.22.odt

of dismissal of the second appeal, pending civil applications, if any,
stand disposed off.

[S.G. CHAPALGAONKAR]
JUDGE

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