

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.1889 OF 2023
IN SAST/33748/2022 WITH SA/375/2022 WITH CA/8704/2022
IN SA/375/2022 WITH CA/1890/2023 IN SAST/33748/2022

KASHIBAI BHAGWANRAO DEVDE AND OTHERS
VERSUS
DIGAMBAR @ MURLIDHAR TULSIRAM KOLHE AND OTHERS

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Mr. A.D Sonkawade, Advocate for the applicants.
Mr. B.R. Kedar, Advocate for respondent Nos. 1 to 4.
Mr. M.D. Shinde, Advocate for Respondent No. 7.

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CORAM : KISHORE C. SANT, J.

DATE : 18th OCTOBER, 2023

PER COURT:

1. This application is filed seeking condonation of delay of 169 days caused in filing Second Appeal Stamp No. 33748 of 2022. Second appeal is filed challenging the judgment and order dated 31.03.2022, passed by learned District Judge-1, Ambad, allowing the appeal thereby modifying the judgment and decree passed in Regular Civil Suit No. 69/2013 dated 10.02.2020, passed by learned Joint Civil Judge, Junior Division, Ghansawangi, Jalna.

2. The Trial Court had allowed the suit of the plaintiff and granted decree of declaration and partition holding that

plaintiff and defendants entitled to 1/3rd share in the suit properties.

3. Learned Lower Court by way of impugned judgment declared plaintiff and defendant No. 1 to one ½ share each in Gut No. 100, 290 and House No. 204, thus legal heirs of defendant No. 6 filed this appeal.

4. It is stated in the application that applicants were not aware of the judgment passed by learned District Judge-1 as they were not informed by other parties. When they served with the notice in the second appeal, they got knowledge of the judgment and order. It is thereafter second appeal along with present application came to be filed.

5. Learned advocate for applicants submit that appellant could not file appeal within time for want of knowledge of the impugned judgment and order and that is a sufficient cause for condonation of delay.

6. Learned advocate for the other side vehemently opposes the application stating that filing of the appeal itself is unnecessary as the defendant is also declared as owner to the extent of his share. He opposes the application stating that the

reason assigned in the application is not genuine reason. Parties had knowledge of the judgment and order and therefore he submits that application deserves to be rejected.

7. Considering the averments in the application and the case of applicants, this Court finds that a case is made out to condone the delay. The delay is therefore condoned.

8. Civil Application is allowed and is disposed of.

9. Office to register the appeal and place the same along with Second Appeal No. 375/2022.

[KISHORE C. SANT, J.]