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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL (ST) NO. 25699 OF 2022
WITH
INTERIM APPLICATION NO. 4314 OF 2023
WITH
INTERIM APPLICATION NO. 4315 OF 2023

Chalu Ravalu Dalavi and Others ... Appellants/Applicants
Vs.

Narayan Laxman Dalavi and Another ... Respondents

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signed by
RAJESHWARI
RAMESH
PILLAI
Date:
2024.12.03
08:57:10
+0200

Mr. Kalpesh Patil for the Appellants / Applicants.

Mr. Amol Dhumal for Respondent No. 1.

CORAM : GAURI GODSE, J.

DATE : 19th NOVEMBER 2024

ORDER :

Interim Application No. 4314 of 2023 :

1. This application is for condonation of delay of five days in filing the Second Appeal. Learned counsel for the applicant submits that as per the date of the application for certified copies and receipt of certified copies there is no delay. He however submits that since office had raised objection that there is delay of five days the present application is filed for condonation of delay. He submits that the reasons for condonation of delay are indicated in paragraphs 12 to 14 of the application.

2. I have perused the reasons stated in the application. As per the dates I find substance in the arguments raised on behalf of the appellant. In view of the dates mentioned in paragraph 12 it appears that delay is unintentional. The delay in filing the second appeal is minimal and hence for the reasons stated in the application, delay of five days is condoned. Application is allowed in terms of prayer clause (a).

Second Appeal (St) No. 25699 of 2022

3. Second appeal is admitted on the following substantial questions of law :

(i) In view of the pleadings of the plaintiffs that the suit property received is one-half share by Ravalu and Laxman, whether the injunction could have been granted by accepting the plaintiff in lawful exclusive possession of the suit property ?.

(ii) In view of the pleadings of the parties whether there can be any injunction in favour of the plaintiff in as much as the suit property would be a joint property of the parties as the plaintiff is heir and legal representative of Laxman and defendants are heirs and legal representatives of Ravalu ?

(iii) Whether both the courts erred in granting a decree for injunction by accepting plaintiff's exclusive possession, in the absence of any partition and separate possession between the parties ?

4. Learned Advocate for the respondent no.1 waives notice.
5. In addition to court notice, learned Advocate for the appellants to serve the remaining respondents by private service and file service affidavit.
6. Call for record and proceedings.
7. Printing is dispensed with.
8. Learned Advocate for the appellants shall file private paper book within one year from today.

Interim Application No. 4315 of 2023

9. Rule on interim relief in terms of prayer clause (a) is made returnable on 28th January 2025.
10. Learned Advocate for the respondent no.1 waives notice for respondents.
11. In addition to court notice, learned Advocate for the Appellants

to serve the remaining respondents by private notice and file service affidavit before the next date.

12. Till next date by way of ad-interim relief no coercive action to be taken against the applicant in terms of the impugned decree.

[GAURI GODSE, J.]