



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.243 OF 2025
WITH
CIVIL APPLICATION NO.6624 OF 2025

1. Nandkumar Narayanrao Shivalkar,
2. Vivek S/o Nandkumar Shivalkar. **... Appellants**

Versus

1. Sanju Marichand @ Marchand Ubale
(Died Through Legal Heirs)
- 1/1. Pallavi d/o Sanju Ubale,
- 1/2. Shrikant S/o Sanju Ubale,
2. Jathindhar @ Balu S/o Marichand @ Marchand Ubale,
3. Adnianbai w/o Marichand @ Marchand Ubale,
4. Marichand @ Marchand Eknath Ubale,
- 4/1. Shankar S/o Marichand @ Marchand Ubale,
- 4/2. Urmila W/o Sidram Bhise,
- 4/3. Surekha W/o Sanjay Motale,
- 4/4. Lata W/o Dilip Shinde,
- 4/5. Sudhamati w/o Marichand @ Marchand Ubale,
5. Laxmibai W/o Marichand @ Marchand Ubale, (Died),
6. Dondiram s/o Bali. **... Respondents**

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Mr. Pratap P. Mandlik, Advocate for the Appellants.

Mr. G. L. Deshpande, Advocate for Respondent Nos.1/1, 1/2 and 3.

...

CORAM : SHAILESH P. BRAHME, J.

DATE : 2nd JULY, 2025

PC.:-

1. Heard Mr. Pratap Mandlik, learned Advocate for the Appellants and Mr. G. L. Deshpande, learned Advocate for Respondent Nos.1/1, 1/2 and 3.

2. This appeal is circulated for urgent admission showing exigency that tomorrow is the date scheduled by the Circle Officer, AUSA for handing over possession as per decree passed by the Civil Court.

3. This appeal questions judgment and decree dated 07.07.1972 passed in Regular Civil Suit No.190 of 1971 as well as order dated 03.05.2024 passed by learned District Judge, Latur refusing to condone the delay and thereby rejecting Civil Miscellaneous Application (Delay) No.16 of 2023. Appellants were not party to the suit, but they are purchaser of part of suit land from Respondent No.4 and Respondent No.4/1. Respondent Nos.1 to 3 are Original Plaintiffs, whereas Respondent Nos.4 to 6 are Original Defendants.

4. Regular Civil Suit No.190 of 1971 was filed for partition and possession in respect of Survey No.124/B, admeasuring 8 Acre 33 Guntha, situated at village Bhada and a house property. The

controversy *interalia* between the parties to the suit was that Respondent No.4-Marichand @ Marchand Eknath Ubale was having two wives; namely, Respondent No.3-Adnianbai and Respondent No.5-Laxmibai. Plaintiffs were denied their share being offsprings of void marriage. It was decreed on 07.07.1972 awarding 3/4th share in the suit land and suit house. Matter was referred to the Competent Authorities for effecting shares. The decree passed by the Trial Court was not challenged by Respondent Nos.4 to 6, who were parties in the suit. Thereafter, Respondent Nos.4 and 4/1 sold part and parcels of the suit land to the present Appellants vide sale deeds dated 21.10.2004, 25.05.2005 and 19.01.2006. The details of which are mentioned in the memo of M.C.A No.16 of 2023.

5. It's a case of the Appellants that decree of partition was put to execution in 2003 in Regular Darkhast No.74 of 2003. In 2006, they learnt about it. Their vendors did not disclose the decree passed by the Civil Court or the execution proceedings. They approached the Executing Court by filing objection petition (Exhibit-38). Their objections were overruled. Being aggrieved, they preferred appeal before District Court, then second appeal before High Court and ultimately SLP before Apex Court, but could not get any relief. In pursuance of the observations of High Court in Second Appeal No.726 of 2009, they decided to file R.C.S. No.129 of 2010 against the

Respondents.

6. In R.C.S. No.129 of 2010, application was submitted under Order VII Rule 11 of the Code of Civil Procedure, 1908 (C.P.C.) by the Defendants therein and it was allowed. The decree of rejection of plaint was challenged in R.C.A. No.192 of 2008. It was allowed on 05.10.2023 by Lower Appellate Court, which resulted into filing of second appeal by Respondents/decreed holders. The appeal is pending in the High Court.

7. Appellants were advised to challenge the decree dated 07.07.1972 and hence on 30.10.2023, appeal was filed along with M.C.A. No.16 of 2023 for condonation of delay. The Respondents objected the application for delay. Lower Appellate Court by impugning order refused to condone the delay of 16 years, 7 months and 3 days, which is the cause for filing of present second appeal.

8. Mr. Pratap Mandlik submits that Ground Nos.B to E would constitute substantial questions of law. It is submitted that Appellants have elaborately narrated the sequence of event, which would be sufficient to condone delay. There are no malafides on their part in causing delay. It is submitted that Appellants are bonafide purchasers for value without notice and their vendors, who are present Respondent Nos.4 and 4/1 kept them in dark regarding decree of civil

court and its execution. No sooner than they learnt about the execution, they resorted to various remedies as advised to them. It is submitted that length of delay is immaterial when detail grounds are mentioned for condonation of delay. Liberal approach should have been taken by learned Judge. It is further submitted that the time spent in various litigation needs to be excluded by implication of Section 14 of Limitation Act. Learned Advocate has placed reliance on the judgment of *Inder Singh Vs. The State of Madhya Pradesh*¹ and *Sayeed Ismail s/o. Sayeed Kasim & Ors. Vs. Ushadevi w/o. Rajendra Anand*².

9. Mr. Gaurav Deshpande appearing for the Respondents repels the submissions of Appellants. It is submitted that Appellants are unsuccessful upto Supreme Court in their objection raised to the execution of the decree. In that hierarchy, their claim is rejected on merits by High Court in Second Appeal No.726 of 2009 as well as by the Apex Court. It is further contended that in R.C.S. No.129 of 2010, their plaint has been rejected and emanating from those proceedings, second appeal is pending in the High Court. It is submitted that Appellants have indulged in dilatory tactics and resorted to wrong remedies. It is contended that they could have approached Appellate Court in time. It is submitted that execution was filed even prior to

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2003. The Respondents are waiting for fruits of the decree for last 54 years. It is further submits that even if decree is executed, no prejudice would be caused to the Appellants because their vendors are likely to get share in the suit land. It is submitted that no substantial questions of law is involved in the matter.

10. My attention is adverted by learned Advocate for the Appellants to the observations of learned Single Judge in Second Appeal No.726 of 2009, which are as follows:-

3] The questions as to whether Adnyanbai and her children were entitled to decree or that whether the defendant Marchand, Laxmibai and Laxmibai's children comprised of the joint family property being the legally wedded wife and legitimate children of defendant Marchand are beyond the scope of enquiry in execution proceedings. Probably, Laxmibai and her children and persons claiming through them could have challenged the validity of the decree in suit no. 190 of 1971 by filing an appeal. But if that was not done, such an objection based on such factual background to the judgment and decree in suit no. 190 of 1971 is beyond the scope of enquiry under Order 20 Rule 97 of the Code of Civil Procedure etc. The appeal should therefore, fail. The Second Appeal stands dismissed.

11. Admittedly, Appellants were not party to R.C.S. No.190 of 1971, which was for partition and possession. Its decree dated 07.07.1972 was not challenged by the parties to the suit. Execution was filed in the year 2003. Part of the suit properties were transferred by Respondent Nos.4 and 4/1 vide sale deeds dated 21.10.2004, 25.05.2005 and 19.01.2006. Passing observations referred above

cannot help Appellants.

12. The objections raised by the Appellants vide Exhibit-38 in the executions were overruled on merits by the Executing Court and the said order was confirmed upto Supreme Court by passing order dated 22.10.2010. After suffering the adjudication, Appellants could have approached the Appellate Court challenging decree dated 07.07.1972, but they resorted to R.C.S. No.129 of 2010. Even after rejection of plaint, they could have filed appeal, but they preferred to file appeal, albeit, they were successful in that. There is a delay of more than 54 years in challenging decree dated 07.07.1972. If the delay is to be reckon from their knowledge occurred in 2006, then it is delay of more than 16 years.

13. The delay is inordinate and is not condonable on precious reason that they were not being advised properly and they were prosecuting the remedies before wrong forum, bonafide. Mere sequence of the events or the persuasion of remedies by the Appellants would not enure to their benefit. Neither would that be treated as sufficient cause. They went on taking chances. It has not been shown that remedies availed by Appellants failed due to defect of jurisdiction or other cause of like nature.

14. It is not brought on record as to what steps they have taken

against their vendors, who failed to disclose the previous litigation. The decree holders cannot suffer because of judgment debtors/vendors overtact. The Respondents/decreed holders are waiting for the fruits for considerable period. It would be their legitimate expectation to conclude the litigation at some point of time. This aspect of the matter cannot be lost sight of. The over stretched sympathy and liberal approach cannot be adopted in the present case.

15. Considering the various remedies undertaken by the Appellants and that too in the wrong forum, there is every reason to infer that those are the dilatory tactics undertaken to deprive the decree holders from the fruits of the decree. The Appellants are in possession. I do not find any perversity or illegality in the findings recorded by the Lower Appellate Court.

16. It is relevant to notice that Section 14 of the Act is coached with a rider that to exclude the period, the remedy should have been prosecuted in good faith in a court, which from defect of jurisdiction or other cause of a like nature would be unable to entertain it. There is absolutely no material placed on record to show that Appellants were unsuccessful before various forums due to defect of jurisdiction or other cause of a like nature. On the contrary, Appellants suffered adjudication on merits.

17. In that view of the matter, I am of the considered view that no benefit of Section 14 of the Act can be extended to the Appellants. The stray observations of the learned Single Judge in Second Appeal No.726 of 2009 would not give any cause of action to challenge the decree and those observations would not help the Appellants for condonation of delay. The liberal approach in the present matter would lead to misplaced sympathy to the defaulting Appellants. Present second appeal has also not been prosecuted diligently. It was dismissed for non-removal of office objections vide order dated 09.10.2024. Albeit the same was subsequently restored yesterday only.

18. Learned Advocate for the Appellants placed reliance on judgment of *Inder Singh Vs. The State of Madhya Pradesh (supra)* to buttress that liberal approach should be adopted in condoning the delays, when limitation undermines the merit. My attention is diverted to paragraph Nos.14, 16 and 17 and case law *interalia* discussed in them. The principles laid down therein cannot be doubted. Mere length of delay is not significant. I have already recorded findings that it is not possible to adopt liberal approach in the present matter in the context of peculiar facts and for want of bonafides on part of the Appellants. This judgment would not help the Appellants.

19. Reliance is placed on *Sayeed Ismail s/o. Sayeed Kasim & Ors.*

Vs. Ushadevi w/o. Rajendra Anand (supra). In the reported judgment, delay was caused for making application under Order IX Rule 13 of C.P.C. The Defendants had suffered a decree, which he learnt only when execution was filed. He preferred objection petition in execution, which was overruled and the same was sustained up to High Court. Thereafter, with application for condonation of delay, recourse was sought to order IX Rule 13 of C.P.C. Thereafter, matter travelled twice to the High Court. Ultimately, the delay was condoned. It was confirmed by the High Court. In the case at hand, the Appellants are in possession of part of the suit land and from 2006, they resorted to various remedies and suffered rejection on merits. The proceedings started in the year 1971 has not been finalised till today is the distinguishing factor. Therefore, this judgment also will be of no help to the Appellants.

20. For the reasons stated above, I find that no substantial questions of law is involved in this appeal.

21. Second appeal is dismissed with costs.

22. In view of dismissal of second appeal, civil application does not survive and it is also dismissed.

(SHAILESH P. BRAHME, J.)