



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

974 SECOND APPEAL NO. 453 OF 2025

Laxman Dagdu Birajdar And Ors

VERSUS

Shantabai Maruti Birajdar And Ors

...

Advocate for Appellant : Mr. A. N. Nagargoje h/f Mr. Apparao Prakash
Yenegure

...

**WITH
CIVIL APPLICATION NO. 13841 OF 2025
IN SA/453/2025**

...

CORAM : ARUN R. PEDNEKER, J.

Dated : December 17, 2025.

PER COURT :-

1. Heard.

2. The learned Counsel for the petitioner submits that in a suit filed for partition, a decree was passed by the Trial Court directing 50% share in favour of the plaintiff and 50% in favour of the defendant. He submits that during the pendency of the proceedings before the Trial Court, Defendant No.1, the father of the present plaintiffs, died in 2004, and as such, the mother and the children were brought on record. The mother was not on good terms with the father and was residing separately from him.

3. The learned Counsel further submits that Respondents No.1C and 1D were minors at that time, and Respondent No.1D was not represented. As far as Respondent No.1C is concerned, at the relevant time, he was 10 years and 9 months old. However, the record of the Appellate Court cause title shows that Applicant Mallappa Birajdar was aged 18 years and Applicant Anubai

Belle aged 20 years. In fact, Mallappa was 10 years and 7 months, and Anubai was 12 years at the relevant time, when they were brought on record. During the course of proceedings pending before the Appellate Court, the mother expired in 2009.

4. The learned Counsel for the petitioner submits that although they were minors at the time of the suit, Respondents No.1C and 1D were shown in the cause title as majors. They were not aware of the suit or the decree passed. Only when the execution proceedings were filed did they become aware of the decree passed against them, and accordingly, the appeal was filed along with an application for condonation of delay. He submits that along with the application for condonation of delay, an affidavit of evidence was filed by Mallappa (Respondent No.1C), pointing out relevant facts along with the Secondary School Certificate of Mallappa and the School Leaving Certificate of Anubai.

5. The learned Counsel further submits that evidence was filed along with the supporting affidavit. However no opportunity to lead evidence was granted by the Trial Court. The Judgment notes that the documents were not duly proved, although the affidavit of evidence had been filed. Considering the submissions of the petitioner, prima facie, the documents produced on record raise a substantial question of law as below :

(1) Whether the Appellate Court ought to have granted an opportunity to the applicants to establish / lead the evidence that the applicants were minors at the time when the suit summons were served and that they were not represented by a major as next friend to them before the Civil Court, and as such, they were not aware of the proceedings before the Trial Court ?

(2) Whether the applicants were minors at the time of service of summons, and consequently, whether the delay in filing the appeal should be condoned ?

6. Issue notice to the respondents, returnable on 14/01/2026. Humdast allowed. In addition, the petitioners are permitted to serve the respondents by all private permissible modes.

7. In view of the prima facie above noted substantial questions of law, till the next date, status quo as of today shall be maintained.

8. It is made clear that if the petitioners fail to serve the respondents by 05/01/2026, the interim order granted today shall stand automatically vacated.

(ARUN R. PEDNEKER, J.)

vj gawade/-.