

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2625 OF 2023

IN

SECOND APPEAL (ST) NO.4938 OF 2023

Aappa Rama Kallole & Ors. ...Applicants

Versus

Annaso Shivappa Benichetge ...Respondent

Mr. Prajakt Arjunwadkar a/w. Mr. Prathamesh S. Hande, for the Applicants.

Mr. Manoj A. Patil, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED : 21st JULY 2025

P. C.:

1. Heard Mr. Arjunwadkar, learned Counsel appearing for the Applicants and Mr. Patil, learned Counsel appearing for the Respondents.

2. The relief sought in the Interim Application is to condone the delay of about 6 years 8 months in filing the Second Appeal. The main reasons are set out in paragraph No.5, which reads as under:

5. Applicants state that though impugned Judgment of the Trial Court was passed in 2016 due to legal advice received to him they thought fit wrongly to prosecute execution proceedings before the

Revenue Authorities in respect of finalisation of partition chart. Applicants were wrongly advised to raise a dispute before the Revenue Authorities only. Applicants state that keeping faith and trust on whatever legal advice received to them they only prosecuted before Tahsildar and SDO in partition Appeal in the meantime. Applicants were ignorant of the fact that Revenue Authorities are merely required to execute the decree of the Civil Court and they have no rights to consider merits and demerits in respect of averments of partition raised in a civil suit. Applicants state that since Appellate Court while recording finding on issue no. 3 was pleased to observe that, Respondent is not entitled for convenient allotment of east-west stripe out of suit property bearing Gat No. 947. Applicants state that since negative finding was recorded by Appellate Court in respect of issue no. 3, they were under belief that present arrangement of cultivation will not be disturbed save and except Respondent will be provided an approach to his western strip as claimed in the Plaint filed in R.C.S. No. 36 of 2010. Applicants state that despite giving direction and findings by Civil Court, TILR is in a haste to effect partition in east-west direction affecting rights and cultivation of Applicants. Taking overall view Applicants realised to challenge impugned Judgment of Appellate Court in R.C.S. No. 33 of 2013”.

(Emphasis added)

3. Thus, for a huge delay of 6 years 8 months the reason given is that due to the legal advice received by the Applicants, the Applicants thought fit wrongly to prosecute the execution proceedings before the Revenue Authorities in respect of finalization of the partition chart. It has been stated that the

Applicants have been wrongly advised to raise a dispute before the Revenue Authorities and the Applicants have trusted on whatever legal advice received to them and they only prosecuted before the Tahsildar and SDO in partition Appeal in the meantime.

4. However, perusal of the record shows that Regular Civil Suit No.36 of 2010 has been filed before the learned Civil Judge Junior Division, Kurundwad by the Respondent i.e. original Plaintiff seeking partition. The prayers in the said suit are set out herein below for ready reference:

“अ) दावा गटातील वादीचा रजि दस्त क्र ८३४ ता. ७/७/७५ चे खरेदीप्रत्राप्रमाणे ४० गुंठ्याचा हिस्सा तुटक होवून मिळणेचा हुकुमनामा व्हावा.

ब) शक्यतो वादीच्या तुटक हिश्यास पूर्वेस असणा—या रस्त्यापर्यन्त तुटक पट्टी होवून मिळावी व रस्त्याचा लाभ वादीस मिळावा.”

5. Thus, it is very clear that the suit has been filed seeking partition by the Plaintiff as per the registered Sale Deed dated 7th July 1975. The suit has been filed in the year 2010 *inter alia* raising the following contentions in paragraph No.2:

“२. सदरहू संपूर्ण गटाची मिळकत ही पूर्वी नाना रामा कल्लोळे, आप्पा रामा कल्लोळे, बापू रामा कल्लोळे, बबरू रामा कल्लोळे, चंदन रामा कल्लोळे, सोनाबाई ४. रामा कल्लोळे यांच्या मालकी वहिवाटीच्या होत्या. त्यापैकी बापू रामा कल्लोळे, बबरू रामा कल्लोळे व चंदन रामा कल्लोळे यांच्या हिस्सेतील समाईक ४० आर

आकार रूपये ४.९ पैसेची मिळकत प्रस्तुत वादीने तारीख ७.७.१९७५ वे रजि. दस्ताने खरेदी घेतली असून त्याप्रमाणे फेरफार होवून वादीच्या नांवाची नोंद ७/१२ पत्रकी घातली गेलेली आहे. तर राहिलेली दोन हिस्से म्हणजे आप्पा रामा कल्लोळे व नाना रामा कल्लोळे यांचे शिल्लक होते. त्यापैकी नाना रामा कल्लोळे यांनी त्यांचा हिस्सा अभिजीत आण्णा कल्लोळे व पद्मजा आण्णा कल्लोळे यांना रजि. दस्ताने खरेदी दिलेले आहे. त्याच्याही नांवाची नोंद ७/१२ पत्रकी झालेली आहे. तथापि सर्व वहिवाटी समाईकात असून जो तो सोईनुसार आपापल्या क्षेत्रात वहिवाट करतो. परंतु प्रत्यक्षात चतुः सिमापूर्वक वाटण्या झालेल्या नाहीत. त्यामुळे वरचेवर वाद निर्माण होत असून वहिवाटीच्या क्षेत्रात वरचेवर बदल होवू लागलेले आहेत. वादी हे वयस्कर असून ते इचलकरंजी येथे राहतात. तर प्रतिवादी हे शिरढोण गांवी राहतात. याचा गैरफायदा घेवून अंगबळाचे जोरावर प्रतिवादी विनाकारण वहिवाटीस अडथळा करत आहेत. त्यामुळे चतुः सिमेपूर्वक वाटण्या होवून ज्याचे त्याचे क्षेत्र ज्याच्या त्याच्या ताब्यात येणे आवश्यक आहे. तसेच सदर गटाचे पूर्व बाजूस डबाण नांवाचा मोठा रस्ता असून प्रत्येक हिस्सेदारास सदरचा रस्ता वहिवाटीस मिळणे आवश्यक आहे. आपसात समजुतीने गट विभाजन करण्यास प्रतिवादी तयार नाही. जेणेकरून वादीस वहिवाटीस अडचण निर्माण व्हावी असा प्रतिवादीचा प्रयत्न आहे. अशा स्थितीत वादीने खरेदी केलेली ४० आर क्षेत्राची जमीन तुटक होवून त्याप्रमाणे चतुः सिमापूर्वक वाटणीचा हुकूमनामा होणेकरीता वादीस प्रस्तुतचा दावा करावा लागत आहे”.

(Emphasis added)

Thus, what is contended by the Plaintiff is that the Plaintiff has purchased 40 R undivided share out of the suit property i.e. totally admeasuring 79 R. There are frequent changes in the occupancy of the land and therefore, the suit has been filed for partition and separate possession and also contending that the benefit of the road be given to all the co-owners and therefore the relief sought is that as far as possible, the land adjoining the road to some extent be allotted in favour of the Plaintiff i.e. the Respondent. In the said suit, the present Applicants i.e. Defendant Nos.1 to 3 filed written

statement *inter alia* accepting that the Plaintiff has purchased 40 R area out of 79 R area of the suit land. It has been further contended that there is oral partition between the Plaintiff and the Defendants in the year 1986. The learned Trial Court dismissed the suit. The learned Appellate Court has set aside the said decree and modified the same by directing that the Plaintiff is entitled for partition and separate possession to the extent of 40 R.

6. Thus, it is clear that the decree passed by the learned Appellate Court is in consonance with the registered Sale Deed dated 7th July 1975, by which the Respondent i.e. Plaintiff has purchased 40 R land out of the suit property consisting of 79R. The suit which has been filed before the learned Trial Court is seeking specific prayer. The Applicants have filed written statement accepting that the Respondent has purchased 40R land out of total land admeasuring 79 R land and only raised the contention regarding oral partition of the year 1986.

7. It is also required to be noted that the present Second Appeal has been filed after the Revenue Authorities have almost finalized the partition of the land. Thus, in fact, perusal of the

record shows that inspite of the decree passed by the learned Appellate Court on 16th March 2016 various objections are raised before the Revenue Authorities in the execution of the decree and after failure of the said effort, the Second Appeal is filed by giving reasons for inordinate delay of more than 6 years that due to wrong advice, execution proceedings were prosecuted.

8. Another reason given for delay condonation is that due to the decision on the point No.3 by the learned Appellate Court, the Appeal was not filed. It is significant to note that in fact the said point has been held against the Respondent, however partition decree has been passed.

9. Thus, it is clear that the Second Appeal is filed after delay of 6 years and 8 months with *mala fide* intention, after all the efforts to delay the execution has been exhausted.

10. Mr. Arjunwadkar, learned Counsel appearing for the Applicants has relied on the decision of the Supreme Court in the case of ***Basawaraj vs. The Spl. Land Acquisition Officer***¹ and more

¹ AIR 2014 SCC 746:2013 AIR SCW 6510

particularly, on paragraph Nos.9 to 12. Although there is no dispute about the proposition that expression sufficient cause should be given liberal interpretation, however, in the facts and circumstances of this case, it is very clear that the Applicants by one method or other are denying right to the Respondent-Plaintiff to enjoy 40 R land out of 79 R land of the suit property, which they have purchased by registered Sale Deed dated 7th July 1975. Factual position on record clearly shows that the suit which has been filed in the year 2010 has been finally decreed by the learned First Appellate Court in the year 2016 and after the Revenue Authorities have almost finalized the partition of the land, the Second Appeal is filed after delay of about 6 years and 8 months. Accordingly, delay application filed is not *bona fide*.

11. Thus, the Interim Application No.2625 of 2023 seeking delay condonation is dismissed with costs.

12. As the Interim Application seeking delay condonation is dismissed consequently, the Second Appeal and the Interim Application (ST) No.2626 of 2023 seeking stay to the impugned Judgment and decree is also disposed of.

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[MADHAV J. JAMDAR, J.]