



1.cas.285.2025 aw connected applns. in sa.209.2010.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAS) NO. 285 OF 2025

WITH

CIVIL APPLICATION (CAS) NO. 286 OF 2025

WITH

CIVIL APPLICATION (CAS) NO. 95 OF 2025

IN

SECOND APPEAL NO. 209 OF 2010

(Kamlabai Shankarrao Ugale & Ors. V/s Sunil Haribhau Asarkar (dead) through L.Rs.)

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. R. G. Kavimandan, Advocate i/by Mr. R. L.
Khapre, Senior Advocate for Appellants.
Mr. P. A. Gupta, Advocate for Respondent No.2.

CORAM : ROHIT W. JOSHI, J.

DATE : APRIL 29, 2025.

CIVIL APPLICATION (CAS) NOS. 285/2025 AND 286/2025

. The Appellant Nos.2(B) and 4 have expired. These Applications are filed seeking condonation of delay in filing application for bringing their legal representatives on record, setting aside abatement of Appeal against them and bringing their legal representatives on record.

2. There is a delay of around 628 days in bringing legal representatives of the Appellant No.2(B) on record and delay of 3565 days in bringing legal representatives of the Appellant No.4 on record.

3. It is stated that the Application for amendment of plaint was filed by the Respondent No.2 in Second Appeal, as a consequence thereof, the learned Counsel for Appellants has contacted the Appellants to seek instructions for filing reply to the said Application. It is mentioned that at this stage the learned Counsel for Appellants was appraised about demise of the Appellant Nos.2(B) and 4. Based on his advice, Civil Applications are filed for bringing their legal representatives on record.

4. The Appellants have stated that they have acted promptly on being informed about need to bring their legal representatives on record.

5. The Appeal is filed in the year 2010. Second Appeal is admitted vide order dated 21/6/2010. The Appeals of earlier years are also pending.

6. In view of the aforesaid, it will be expedient in the interest of justice that although the delay is inordinate, it should be condoned. However, having regard to the period of delay, it is necessary to impose costs of Rs.10,000/- in each Application for the purpose of condonation of delay.

7. Civil Applications are allowed.

8. The delay in filing application for bringing legal representatives on record is hereby condoned, the abatement of Appeal against the Appellant Nos. 2(B) and 4 is set aside and permission is granted to bring their legal representatives on record, subject to payment of costs of Rs.20,000/- (Rs.10,000/- in

each Application), to be paid to the Respondent No.2 within a period of four weeks from today.

CIVIL APPLICATION (CAS) NO. 95 OF 2025

. The present Application is filed for amendment of plaint.

2. Regular Civil Suit No. 25/1977 was filed by the Plaintiff seeking decree of possession with respect to the suit property. It is the case of the Plaintiff that the suit property was his separate property which was alienated by his father/Defendant No.3 in favour of the Defendant Nos.1 and 2. There is no prayer in the plaint for cancellation of the sale deed. However, perusal of the averments made in the plaint indicate that reference is made to the provisions of Hindu Minority and Guardianship Act, 1956 to contend that sale deed executed by the father/Defendant No.3 in favour of the Defendant Nos.1 and 2 was illegal for want of permission as contemplated under the said Act.

3. The learned Counsel for Respondent No.2, who is son of the original Plaintiff No.1, contends that the amendment does not alter nature of the suit and the prayer for declaration that sale deed is illegal, not binding on the Plaintiff, is based on the same set of facts, on which prayer for possession is made.

4. Mr. Kavimandan, learned Counsel appears for the Defendant Nos.1 and 2 and strongly opposes the Application contending that prayers cannot be allowed to be incorporated at this stage, since the relief sought to be claimed is hopelessly

barred by limitation. He contends that the such amendment cannot relate back to the date of filing of suit.

5. Keeping the point of limitation open, Civil Application is allowed.

(ROHIT W. JOSHI, J.)

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