IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

15 WRIT PETITION NO. 13573 OF 2026

NARAYAN DHONDIBA GHAYWAT AND OTHERS
VERSUS
CHANDRAKANT HARI GHAYWAT AND OTHERS

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Advocate for the Petitioners : Mr. Nagargoje Ankush Nivrutti..
Advocate for Respondents/Caveator : Mr. Ajay T. Kanawade.
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CORAM : MANJUSHA A. DESHPANDE, J.
DATE : 05.10.2026

PER COURT :-

1. The petitioners are original defendant Nos.2, 4, 5, 7, 8 and 9 in RCS.No.13 of 2011 filed by the respondents herein. According to the petitioners, although there was already a partition effected amongst the heirs of original owner and ancestor one Hona in the year 1955 itself. In spite of that, the suit has been filed for partition and separate possession by Haribhau/original plaintiff, who is predecessor of respondent Nos.1 to 4. According to the petitioners, there were misled by the plaintiff to believe that the suit for partition is limited only to the extent of the share in Gut No.140. Therefore, they did not oppose the suit since the partition was already effected in the year 1955 and the petitioner had already acquired some properties thereafter and some other properties were also sold

by the members of the other branch of the family. The petitioner has placed on record mutation entries recorded in the year 1955 which indicates that partition of the property owned by the original owner Hona had been partitioned between three descendants Tukaram, Punja and Thama.

2. It is further contention of the petitioners that, since the petitioners were misled, they did not oppose the suit and therefore, decree came to be passed against the petitioners on 26.06.2014. Only when the execution was filed by the respondents herein did they come to know about the exact nature of the decree passed by the Civil Judge Junior Division. Therefore, they have immediately taken steps and filed RCA before the District Judge, Sangamner accompanied by an application for condonation of delay.

3. It is the contention of the petitioners that, the petitioners had already led evidence in support of condonation of delay and it is now for the District Court to pass appropriate orders on his application for condonation of delay. However, in the meanwhile, the Tahsildar has passed an order on 20.07.2026 for execution of the decree of partition. Therefore, the petitioners have filed an application below Exh.37 in Misc. Application No.27 of 2022, praying for stay to the execution of

partition undertaken by the Tahsildar which came to be rejected vide order dated 16.09.2026.

4. It is the contention of the petitioners that, admittedly there are certain lapses on the part of the petitioners, as a result of which, the decree has been passed in favour of the respondents. However, they have already filed an appeal against the said judgment and order and it is pending consideration before the Appellate Court. It is his contention that if at all the application for condonation of delay is not allowed, the decree can be executed by the respondents. The petitioners may be granted some breathing time so that, his application for condonation of delay can be adjudicated by the Appellate Court.

5. Learned advocate appearing for respondent Nos.1 to 4/Caveator opposes the prayer made by the petitioners in the present Writ Petition contending that, the petitioners have appeared in the suit but did not oppose neither did they file their written statement opposing the suit. Since they have conceded in the suit itself, they do not have any right to oppose the execution filed by the respondents herein. Thus, the order impugned has been rightly passed by the District Judge-4, Sangamner.

6. I have heard the respective parties and also gone through the impugned order as well as the other documents placed on record. Admittedly, the petitioners did appear in the suit and has not filed any written statement as observed in the order. However, the learned advocate for the petitioners has demonstrated that, in fact under the belief that since already there was partition effected between them and relief was limited only to the extent of property in Gut No.140, they have not opposed the suit. The claim of the previous partition is supported by the mutation entry placed on record. Thus, I find that, there is substance in the claim of the petitioners and they have made out a *prima facie* case. The petitioners can be protected to some extent, till their application for condonation of delay is decided by Appellate Court.

7. After going through the impugned order, I am also in agreement with the observations made by the District Judge-4, Sangamner that, if the applicants are allowed to get the execution of the decree stayed, without even filing an appeal, it would amount to giving them benefit for their own wrong. However, considering that, already the appeal filed by the petitioners is pending and the Appellate Court is about to pass the order, on the application for condonation of delay. The

petitioners deserves to be protected by delaying the execution of the order for a period of eight (8) weeks so as to enable the Appellate Court to pass appropriate orders on the application for condonation of delay. Hence I pass the following order :

ORDER

(i) The order dated 16.09.2026 passed below Exh.37 is set aside and the order dated 20.07.2026 passed by the Tahsildar shall not be acted upon for a period of eight (8) weeks from the date of this order.

(ii) In the meanwhile, the Appellate Court i.e. the District Judge Sangamner, is requested to decide the delay condonation application filed by the petitioners being Misc. Application No.27 of 2022 preferably within a period of eight (8) weeks. If the petitioners fail to obtain favourable orders, the order dated 16.09.2026 shall be acted upon by the Executing court.

(iii) In the aforementioned directions, writ petition stands disposed of.

(iv) It is made clear that this Court has not expressed anything on the merits of the matter and all the

points and contentions of the parties are kept open to be agitated before the Appellate Court.

(MANJUSHA A. DESHPANDE, J.)

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vmk/-