



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14993 OF 2023

WITH

INTERIM APPLICATION NO.1425 OF 2025

WITH

INTERIM APPLICATION NO.13687 OF 2024

IN

WRIT PETITION NO.14993 OF 2023

Smt. Shantabai Ravu Chavan since

deceased through legal heirs-

Laxman Ravu Chavan since deceased

through legal heirs-

2A Smt. Anjana Laxman Chavan and

Ors.

...Petitioners

V/s.

Maruti Namdeo Chavan and Ors.

...Respondents

WITH

WRIT PETITION NO.12764 OF 2023

WITH

INTERIM APPLICATION NO.1424 OF 2025

WITH

INTERIM APPLICATION NO.13662 OF 2024

IN

WRIT PETITION NO.12764 OF 2023

Smt. Shantabai Ravu Chavan since

deceased through legal heirs-

Laxman Ravu Chavan since deceased

through legal heirs-

2A Smt. Anjana Laxman Chavan and

Ors.

...Petitioners

V/s.

Maruti Namdeo Chavan and Ors.

...Respondents

Mr. Gautam Kanchanpurkar with *Ms. Priya A. Patil i/b. Mr. Ramdas A. Shelke for the Petitioners.*

Mr. Sandeep S. Salunke with *Mr. Shubham M. Paygude for Respondent Nos.1 to 3.*

CORAM: SANDEEP V. MARNE, J.

DATED: 24 FEBRUARY 2026.

ORDER:

1) These two Petitions arise out of orders passed by the District Court, Baramati in Civil Misc. Application No.6 of 2013 filed for the purpose of condonation of delay in filing Civil Misc. Application for restoration of Civil Appeal No.38 of 1998.

2) By order dated 21 July 2022, the Application filed at Exhibit-77 in Civil Misc. Application No.6 of 2013 for adding Respondents thereto has been rejected on the ground that the same was filed at the stage of final arguments. Writ Petition No.14993 of 2023 is filed challenging the order dated 21 July 2022.

3) By order dated 6 August 2022, Civil Misc. Application No.6 of 2013 seeking condonation of delay in filing application for restoration of the Appeal is dismissed. Writ Petition No.12764 of 2023 is filed challenging order dated 6 August 2022.

4) Since both the Petitions arise out of orders passed in the same proceedings, the same are taken up for analogous hearing.

5) Plaintiffs, who are Respondent Nos.1 to 4 herein, instituted R.C.S. No.59 of 1993 seeking partition of the suit properties and for permanent injunction. Shri. Ravu Nana Chavan (**Ravu**) was impleaded as Defendant No.5 to the Suit. Ravu filed written statement opposing the Suit contending *inter-alia* that land bearing original Gat No.207/02 was purchased by his father Nana Chavan out of his independent income and was therefore not a joint family property. The partition Suit was however decreed by judgment dated 7 September 1996 fixing shares of Plaintiffs and Defendants. Decree precept was directed to be sent to the Collector for effecting partition of the Suit lands. Ravu got aggrieved by decree dated 7 September 1996 and filed Civil Appeal No.38 of 1998 in the Court of Additional District and Sessions Judge, Baramati. The Appeal came to be dismissed for want of prosecution on 30 November 2006. Soon after dismissal of his Appeal, Ravu passed away on 19 February 2007. It appears that the Plaintiffs filed Execution Proceedings and Tehsildar initiated proceedings for effecting partition by meets and bounds.

6) On 21 July 2012 Petitioners, who are legal heirs of Ravu filed Civil Misc. Application No.6 of 2013 seeking condonation of delay of 5 years 7 months and 21 days in applying for restoration of the Appeal. The Application was resisted by the Plaintiffs by filing affidavit-in-reply. It appears that the Application remained pending for a long time of over 10 years. On 6 June 2022, Petitioners filed Application at Exhibit-77 for impleadment of five additional parties to the CMA, who were inadvertently not impleaded thereto. The said Application was resisted by the Plaintiffs by filing reply. By order dated 21 July 2022, the learned

District Judge, Baramati proceeded to reject the Application at Exhibit-77 holding that the same was filed after final arguments in the CMA and that the same was aimed at prolonging decision of the CMA. Order dated 21 July 2022 is subject matter of challenge in the Writ Petition No.14993 of 2023.

7) The District Court there after proceeded to decide CMA No.6 of 2013 and by order dated 6 August 2022 has dismissed the same. Aggrieved by order dated 6 August 2022 refusing to condone the delay in filing restoration application, Petitioners have filed Writ Petition No.12764 of 2023.

8) There are large number of parties in the Petitions. Respondent Nos.2 and 8 have apparently passed away during pendency of the Petitions and accordingly Interim Applications are filed to bring their legal representatives on record. However, considering that the nature of controversy does not relate to decision on merits of the case and since Plaintiffs, who are the real affected parties by outcome of the Petitions who are represented by a counsel, it is not necessary to further delay decision of the Petitions by issuing notices to the proposed legal heirs. In fact, the learned counsel appearing for the Petitioners and Respondent Nos.1 to 4/Plaintiffs have jointly requested for expeditious hearing of the Petitions and their final disposal. Accordingly, with consent of the learned counsel appearing for the parties, both the Petitions are taken up for final disposal.

9) Mr. Kanchanpurkar, the learned counsel appearing for the Petitioners would submit that the learned District Judge has erred in dismissing the application for condonation of delay. He would submit that length of delay needs to be appreciated in the light of the position that the original Appellant-Ravu passed away immediately after dismissal of the Appeal in default. That his legal heirs were not aware about dismissal of the Appeal and acquired knowledge about dismissal of the Appeal only when Tehsildar proceeded to effect partition by meets and bounds. He submits that land bearing Gut No.491 is purchased by Ravu's father from his income with which Plaintiffs do not have any concern. He submits that preliminary decree for partition is passed in ignorance of the position that one of the lands is a self-acquired property. He further submits that after death of Ravu, his son Ramchandra Ravu Chavan, who was an illiterate also passed away. That the grandchildren were minor. He would therefore submit that the delay was properly explained before the learned District Judge, who has erroneously proceeded to dismiss the application for condonation of delay. He would therefore pray for setting aside order dated 6 August 2022.

10) So far as order dated 21 July 2022 is concerned, Mr. Kanchanpurkar submits that some of the parties were inadvertently not added in the CMA and Application at Exhibit-77 was filed solely for the purpose of not leaving any technical hurdles in decision of CMA. He would therefore pray for setting aside order dated 21 July 2022 as well.

11) The Petitions are opposed by Mr. Salunke, the learned counsel appearing for Respondent Nos.1 to 4/Plaintiffs. He would submit that there was gross and inordinate delay of 5 years, 7 months and 21 days in seeking restoration of the Appeal. He submits that legal heirs of the Defendant No.5 had participated in the execution proceedings and have adopted a false defence of acquiring knowledge about dismissal of Appeal in the year 2012. He relies on order dated 22 October 2021 passed by Sub Divisional Officer in Appeal filed for correction of partition chart. He submits that said order would indicate that the legal heirs of Defendant No.5-Ravu were fully aware about dismissal of the Appeal. He would further submit that the Suit was instituted in the year 1993. Decree passed therein has remained unexecuted for the last 33 long years. He submits that the present Petitions are filed solely with the objective of somehow delaying execution of the partition decree. That Petitioners are in possession of the land and are deliberately delaying effecting of partition by meets and bounds. That filing of Application at Exhibit-77 for addition of Respondents was clearly aimed at delaying the decision of the CMA. That the CMA filed in the year 2013 was not diligently prosecuted by the Petitioners and remained pending for 9 long years. He would submit that CMA was also filed in a casual manner without impleading of necessary parties. Mr. Salunke would submit that keeping in mind the conduct of the Petitioners, extraordinary jurisdiction of this Court under Article 227 of the Constitution of India need not be exercised. He would pray for dismissal of both the Petitions.

12) I have considered the submissions canvassed by the learned counsel appearing for the parties. I have also gone through the findings

recorded by the learned District Judge in both the impugned orders. I have also perused the records of the case filed alongwith the Petitions.

13) The Suit was instituted by the Plaintiffs for partition of the Suit lands. The Suit land comprised of Gat No.495 admeasuring 3 Hector 37 R, Gat No.491 admeasuring 6 Hector 55 R and Gat No.494 admeasuring 0.02 R. Plaintiffs claim that the suit properties are joint family properties. The Suit proceeded ex-parte against all Defendants except Defendant No.5, who filed written statement contending *inter-alia* that land bearing Gat No.491 was earlier land bearing 207/2 and that the said land is self-acquired property of Ravu's father -Nana Chavan. He relied on registered Sale Deed dated 6 July 1945 in support of claim of land being self-acquired property of his father. The land bearing Gat No.491 is the largest amongst these three suit properties and admeasures 6 Hector 55 R. The Trial Court however, denied theory of land bearing Gat No.491 is self-acquired property of Ravu's father -Nana Chavan and proceeded to hold that all the three properties are ancestral properties. The Suit was decreed determining shares of Plaintiffs and Defendants in the suit lands vide judgment and decree dated 7 September 1996.

14) Aggrieved by the preliminary partition decree dated 7 September 1996, Ravu filed Civil Appeal No.38 of 1998. The Appeal remained pending till November 2006. It appears that amended Appeal Memo was filed in the District Court on 2 January 2006. However, shortly thereafter, the Appeal came to be dismissed for non-prosecution on 30 November 2006. Shortly after dismissal of the Appeal, Ravu passed away on 19 February 2007 leaving behind his wife and three sons and two daughters.

It is claimed by the Petitioners that Ravu was the head of the family and was looking after the Appeal and after his death, his legal heirs did not have any idea in respect of filing and dismissal of the Appeal. One of the sons of Ravu named -Ramchandra Ravu Chavan also passed away in short succession on 24 January 2010. In the meantime, the precept was apparently sent to the Collector for effecting partition in accordance with preliminary decree passed in R.C.S. No.59 of 1993. Deputy Superintendent of Land Records, Daund prepared a partition chart on 15 June 2011. According to the Petitioners, they acquired knowledge of dismissal of the Appeal in June 2012 when Tehsildar-Daund arrived at the suit land. After securing certified copy on 17 July 2012, the Petitioners applied for restoration of the Appeal by filing CMA No.6 of 2013, which also included prayer for condonation of delay of 5 years, 7 months and 21 days.

15) Perusal of the pleadings in the CMA would indicate that though the delay in applying for restoration of appeal is extraordinary (five years, 7 months and 21 days), there is some justification to explain the delay. The present case involves a peculiar circumstance, where the Appellant-Ravu himself passed away within three months of dismissal of the Appeal. The Appeal was dismissed for default on 30 November 2006 whereas Ravu passed away on 19 February 2007. According to the Petitioners, Ravu was the head of the family and other family members did not have idea about dismissal of the Appeal. Here, Appellant-Ravu appears to be diligent in prosecuting the proceedings. The Suit was for partition and apparently other Defendants did not have any interest in defending the Suit. It was Ravu alone, who took a position that largest of

the Suit lands bearing Gat No.491 admeasuring 6 Hector 55 R, was self-acquired property of his father and relied on registered Sale Deed executed in the year 1945. After his defence was rejected and preliminary decree for partition was passed, Ravu was diligent enough in filing appeal before the District Judge, Baramati. He diligently prosecuted the appeal, which is clear from the fact that amended Appeal Memo was filed in the Court on 2 March 2006. According to the Petitioner, Ravu was at an advanced age, which is a reason why the Appeal got dismissed for non-prosecution on 30 November 2006. It appears that another tragedy struck the family when Ravu's son-Ramchandra passed away in a short gap of less than three years on 24 January 2010.

16) No doubt, though litigants need to be vigilant in prosecuting the litigation, it becomes difficult to believe that none of the family members of Ravu were aware of the pending litigation relating to the suit lands. Ravu had a large family of three sons and two daughters and several grandchildren. Even if it is accepted that Ravu was the head of the family exclusively looking after the litigation, it is Petitioners' own case that he was at advanced age of 90 years at the time of his death. There appears to be some discrepancy in the ages of the parties indicated in the Appeal Memo and in the CMA. However, age of one of the sons of Ravu (Bhausahab) is indicated as 68 years in the CMA filed in the year 2013. This would lead credence to Petitioners' contention that Ravu was almost 90 years old at the time of his death. Advanced age of Ravu works both ways. His advanced age can be considered a positive factor for restoration of appeal. On the other hand, if he indeed was 90 years old it is not believable that none of the three sons had any idea of pendency of

Appeal during his lifetime. Considering the above position, though there is some valid justification for restoration of the appeal, at the same time it cannot be said that Petitioners have been entirely vigilant in the matter of filing of Application for restoration. While exercising discretion in favour of one party, the Court needs to be mindful of the position that the other party is not be put to a grave prejudice. The opposite side i.e. Plaintiffs have been fighting for partition of the suit property for the last 33 long years and this factor cannot be ignored altogether while exercising of discretion in favour of the Petitioners.

17) In the present case, the learned District Judge has refused to exercise discretion in favour of the Petitioners by refusing to believe that none of the Petitioners had any idea about pendency and dismissal of the Appeal, particularly because the Suit was for partition. However, in my view, the Appellant -Ravu has attempted to buttress the claim of land bearing Gat No.491 being self-acquired property on the basis of a registered Sale Deed. The said land bearing Gat No.491 is a large tract of land admeasuring 6 Hecter 55 R, equivalent to more than 16 acres. In that view of the matter an opportunity needs to be granted to the Petitioners to prosecute the Appeal. Imposition of exemplary costs on the Petitioners is warranted considering the position that Petitioners have not only delayed filing of application for restoration of Appeal for over a period of five years, but kept the Application pending for 9 long years.

18) Mr. Salunke has contended that the delay enures to the benefit of Petitioners, who continued to possess the suit lands. Therefore, though

Mr. Kanchanpurkar has urged before me that Petitioners are farmers and that therefore only reasonable costs be imposed while restoring the Appeal, factum of Plaintiffs possessing large tract of land and delaying partition for a considerable period of time need to be taken into consideration while deciding the quantum of costs.

19) Considering the peculiar facts and circumstances of the cases, in my view, ends of justice would meet if Petitioners are made to pay costs of Rs.50,000/- while condoning the delay and for restoration of the Appeal. It is seen that a composite Application (CMA No.6 of 2013), both for condonation of delay as well as for restoration of the Appeal was filed. Therefore, while setting aside the order dated 6 August 2022 it would be appropriate to restore the Appeal for deciding the same on merits rather than leaving the issue of restoration for decision by the learned District Judge.

20) So far as order dated 21 July 2022 passed on Application at Exhibit-77 is concerned, the same was only with regard to addition of left out Respondents in the CMA. Since the CMA is being allowed and the Appeal is being restored, it is not necessary to set aside order dated 21 July 2022 as the left out Respondents are already parties in the Appeal.

21) Mr. Salunke has earnestly requested the Court to direct expeditious hearing of the Appeal considering the position that partition decree has remained unexecuted for long time and considering the fact that the Suit for partition was filed 33 years ago.

22) Since the Appeal involves a short issue as to whether the land bearing Gat No.491 is self-acquired or a joint family property, the Appeal can be decided in an expeditious manner. The Petitioners need to co-operate with the Appellate Court for expeditious decision of the Appeal, without making any unnecessary requests for adjournment. In the Appeal, the main contesting parties are Plaintiffs and the Petitioners. Since they are represented before this Court, it would not be necessary to issue any notices to the parties upon restoration of the Appeal and the Appellate Court can be requested to decide the Appeal in an expeditious manner, preferably within a period of six months.

23) Accordingly, I proceed to pass the following order:-

- (i) Order dated 6 August 2022 passed by District Judge-5, Baramati, in Civil Misc. Application No. 6 of 2013 is set aside. Civil Misc. Application No.6 of 2013 is allowed in terms of prayers made therein and accordingly Civil Appeal No.38 of 1998 is restored on the file of District Judge, Baramati.
- (ii) The Petitioners shall pay to original Plaintiffs costs of Rs.50,000/- by depositing the same before the District Court within a period of four weeks. The Plaintiffs would be at liberty to withdraw the deposited costs in the District Court.
- (iii) Deposit of costs within time stipulated shall be condition precedent for restoration of the Appeal.

- (iv) The Appellate Court shall proceed to decide the Appeal on its own merits uninfluenced by any of the findings recorded in the order and preferably within a period of six months.
- (v) Petitioners shall cooperate for expeditious disposal of the Appeal without making any request for unnecessary amendments.

24) Writ Petition No.12764 of 2023 is accordingly allowed and **disposed of**. Nothing survives in the Writ Petition No.14993 of 2023, which is accordingly **disposed of**.

25) With disposal of both the Petitions, nothing survives in the Interim Applications and the same are accordingly disposed of.

[SANDEEP V. MARNE, J.]