



Presented on : 07-04-2015
Registered on : 07-04-2015
Decided on : 17-03-2026
Duration : Y M D
10 09 10

IN THE COURT OF DISTRICT JUDGE - 3, ALIBAG,

DIST. RAIGAD

(Presided over by S.D.Bhagat)

Civil M. A No.80/2015.

CNR NO. MHRG010012232015

Exhibit No.28/A

Smt.Ashalata Vasant @ Manohar Walanj

Age-70 yrs, Occ. Agriculture ... Applicant

At.Devnargaon, Near Metal Box Company

Devnar Mumbai-88.

Versus

1. Shri.Dattaram Kirshnaji Walanj

Age-83 yrs, Occ. Agriculture,

R/o.Nagaon, Post.Nagaon,

Tal.Alibag, Dist.Raigad.

... Opponents.

2. Shri.Milind Gajanana Chawhan

Age.52 yrs, Occ. Advocate

R/o.Anand Apartment, Near

S.T.Stand Alibag,

Tal.Alibag, Dist.Raigad.

Application For Condonation of Delay.

Appearance :-

Adv.Shri.S.N.Joshi for the applicant.

Adv.Shri.J.H.Cheulkar for the respondents

:: J U D G M E N T ::

(Delivered on this 17th day of March, 2026)

Introduction :-

The present Civil Miscellaneous Application arises in the background of Regular Civil Suit No. 246 of 2000, which was decided by the learned 2nd Joint Civil Judge Junior Division, Alibag, by judgment and decree dated 30/04/2008.

02. By the said judgment and decree, the learned Trial Court partly decreed the suit filed by the plaintiff and declared that the plaintiff was in possession of the suit property and further granted perpetual injunction restraining the defendants from causing obstruction to the plaintiff's possession over the suit property.

03. Being aggrieved by the said judgment and decree, the original defendant Smt. Aashalata Walanj intended to challenge the decree by filing an appeal. Since the appeal was not filed within the period of limitation, she filed the present Civil Miscellaneous Application No. 80 of 2015 seeking condonation of delay of about 6 years, 10 months and 6 days in filing the appeal.

04. During the pendency of the said proceedings, Smt. Aashalata Walanj expired on 31/05/2018. After her death, the present applicant Shri Chandrakant Patil filed an application claiming to be the legal representative of the deceased Smt. Aashalata Walanj and sought permission to prosecute the proceedings further.

Order directing enquiry under Order XXII Rule 5 CPC

05. Since the status of the present applicant as legal representative of deceased Smt. Aashalata Walanj was disputed by the opponents, this Court, by order dated 16/04/2019 below Exh.22, invoked the provisions of Order XXII Rule 5 of the Code of Civil Procedure.

06. The following issue was referred to the learned Civil Judge Senior Division, Alibag for enquiry and finding:

1. “Whether the applicant Chandrakant Ramchandra Patil can be considered as the legal representative of Smt. Aashalata Walanj and if so, in what capacity?”
2. The learned Trial Court was directed to conduct enquiry, record evidence, and submit findings along with reasons to this Court.

Enquiry conducted by the Trial Court :-

07. Pursuant to the directions of this Court, the matter was placed before the learned Civil Judge Senior Division, Alibag, who conducted an enquiry in accordance with the

provisions of Order XXII Rule 5 CPC.

08. During the enquiry, the applicant Shri Chandrakant Ramchandra Patil entered the witness box and filed his affidavit in lieu of examination-in-chief at Exh.62. The applicant relied upon a registered Sale Deed dated 18/10/2010 bearing No. Alaba-3920/2010 (Exh.67) which was allegedly executed by Smt. Aashalata Walanj in his favour.

09. The applicant asserted that : i) he had purchased the suit property from deceased Smt. Aashalata Walanj, ii) she had died issueless, and therefore he should be treated as her legal representative for the purpose of prosecuting the proceedings. The applicant was cross-examined by the learned Advocate for the opponents. No independent evidence was adduced by the opponents.

Finding returned by the Trial Court :-

10. After considering the evidence and the relevant provisions of law, the learned Trial Court returned the finding that : “The applicant Chandrakant Ramchandra Patil cannot be considered as the legal representative of deceased Smt. Aashalata Walanj.”

11. The learned Trial Court recorded detailed reasons and observed that the applicant’s claim was based solely on the sale deed executed during the lifetime of Smt. Aashalata Walanj, and therefore the property had already ceased to remain part of the estate of the deceased.

12. Consequently, the applicant could not represent the

estate of the deceased within the meaning of Section 2(11) CPC. The Trial Court therefore answered the issue referred to it in the negative.

Consideration by this Court :-

13. I have carefully gone through the entire material placed before this Court, namely the order dated 16/04/2019 below Exh.22, the issue referred under Order XXII Rule 5 CPC, the enquiry report and finding submitted by the learned Trial Court, the oral and documentary evidence recorded in the enquiry, and the rival submissions advanced on behalf of the applicant and the opponents. I have also perused the relevant record of Regular Civil Suit No.246/2000 to the extent necessary for deciding the present controversy.

14. At the outset it is necessary to keep in mind the limited scope of the present adjudication. This Court is not called upon to decide the merits of the proposed appeal nor the correctness of the judgment and decree dated 30/04/2008 passed in R.C.S. No.246/2000. The controversy is confined to the question whether the present applicant Shri Chandrakant Patil can be recognised as the legal representative of deceased Smt. Aashalata Walanj so as to prosecute the proceedings filed by her.

15. It is well settled that once a party to a proceeding dies, further progress in the proceeding cannot lawfully take place unless a person representing the estate of the deceased is brought on record. In the absence of such representation, the proceeding cannot be continued.

16. For that reason this Court earlier directed the Trial Court to determine the issue under Order XXII Rule 5 CPC. The learned Trial Court has now returned a finding that the applicant cannot be considered as the legal representative of deceased Smt. Aashalata Walanj.

17. The claim of the applicant rests upon the registered Sale Deed dated 18/10/2010 (Exh.67) executed by Smt. Aashalata Walanj in his favour. According to the applicant, since he purchased the suit property from the deceased and she later died issueless, he should be treated as her legal representative.

16. The said contention cannot be accepted in law. Section 2(11) CPC defines the expression legal representative as a person who in law represents the estate of a deceased person or upon whom the estate devolves on the death of such person. Therefore the fundamental requirement is that the person claiming to be legal representative must represent the estate of the deceased.

19. In the present case the applicant himself relies upon the sale deed of 2010 and asserts that the property had already been transferred to him during the lifetime of Smt. Aashalata Walanj. If that position is accepted, it necessarily follows that the property ceased to remain part of the estate of the deceased.

20. Once the property stood transferred during the lifetime of the deceased, it cannot simultaneously be claimed that the same property formed part of the estate of the deceased after her death.

21. Thus the applicant cannot claim that he represents

the estate of the deceased in respect of property which according to him had already been transferred to him. The learned Trial Court has also correctly observed that the applicant is not a natural heir of the deceased. His claim is not based on succession under personal law but solely on the basis of the sale transaction. The provisions of Section 15 of the Hindu Succession Act governing succession to the property of a female Hindu also do not support the claim of the applicant.

22. The applicant does not fall within the statutory line of heirs contemplated under the said provision. Moreover, the question of succession under Section 15 would arise only if the property continued to belong to the deceased at the time of her death. In the present case the applicant himself asserts that the property had already been transferred.

23. The Trial Court has also examined the aspect of survival of right to sue. The right to prosecute the proceedings filed by Smt. Aashalata Walanj could survive only if such right existed in her estate at the time of her death.

24. Once the property had already been transferred during her lifetime, the basis of such right itself stood extinguished. The present proceedings arise out of an application seeking condonation of delay in filing an appeal. The said application was filed by Smt. Aashalata Walanj on the footing that she was aggrieved by the decree passed against her.

25. Since the present applicant does not represent the estate of the deceased, he cannot be permitted to prosecute the said application in the capacity of legal representative. The

learned Trial Court has appreciated the evidence on record and has returned a reasoned finding that the applicant cannot be treated as legal representative of deceased Smt. Aashalata Walanj.

26. Upon independent consideration of the material on record and the legal position governing the issue, I find that the reasoning recorded by the learned Trial Court is sound and does not warrant interference. I therefore concur with the finding returned by the learned Trial Court that the applicant Shri Chandrakant Patil cannot be considered as the legal representative of deceased Smt. Aashalata Walanj.

27. Once the applicant fails to establish his status as legal representative, he cannot be permitted to prosecute the proceedings initiated by the deceased. In such circumstances, since no legal representative of deceased Smt. Aashalata Walanj has been brought on record, the application seeking condonation of delay in filing the appeal cannot be proceeded with.

ORDER

- 1.** The finding returned by the learned Civil Judge Senior Division, Alibag in the enquiry conducted pursuant to the order dated 16/04/2019 below Exh.22 in Civil Miscellaneous Application No.80/2015 under Order XXII Rule 5 of the Code of Civil Procedure is hereby accepted.
- 2.** It is held that the applicant Shri Chandrakant Patil cannot be considered as the legal representative of

deceased Smt. Aashalata Valanj.

3. Consequently, the application filed by Shri Chandrakant Patil seeking recognition as legal representative of deceased Smt. Aashalata Valanj stands rejected.
4. In view of the above finding and since no legal representative of deceased Smt. Aashalata Valanj is brought on record, the Civil Miscellaneous Application No.80 of 2015 seeking condonation of delay in filing the appeal cannot survive and stands disposed of accordingly.
5. Record and proceedings received from the learned Civil Judge Senior Division, Alibag in Regular Civil Suit No.246/2000, along with the enquiry report and evidence recorded under Order XXII Rule 5 CPC, be returned with a copy of this judgment.
6. Costs in cause.

Alibag.

Date : 17/03/2026.

(S.D.Bhagat)

District Judge-3, Alibag-Raigad.