

**ORDER BELOW EXH. 1 IN C.M.A. NO.85 OF 2023**  
**(Dinkar Jagatap & Ors. Vs. Dipak Jagtap & Ors)**

01. Heard Ld. Adv. Shri. N.M. Wadikar for applicants and Ld. Adv. Shri.A.J.Mane for respondent Nos.1 to 6. Perused the application, say, pursis Exh.54 of respondent Nos.8 to 12 of argument and the record.

02. Main application Exh.1 is filed for condonation of delay of 4 yrs. 141 days caused to file appeal against the judgment and decree passed in R.C.S.No.283/2009 on 03.12.2018. The reason mainly is as there was no relief sought against applicants. They remained absent and suit was decided in their absence. But the decree passed considering their property and therefore to prefer appeal is necessary, so they filed this application.

03. Now by way of Exh.34, it is alleged by the applicants that as in the decree of partition, their share was also added in the suit property, despite plaintiffs did not prefer to seek relief against them. Now execution of the decree is at the fag end. They came to know that partition chart is final and any moment, possession will be delivered as per the chart. In that case, they may be dispossessed from the property, so till the decision of main application, said execution is required to be stayed. So, they filed this application.

04. Respondent Nos.1 to 6 file their say below Exh.41 and objected the application alleging that it is false, frivolous and

intentionally moved to cause delay in the execution of the decree. Applicants were having knowledge of the decree and the execution proceeding. On the objection raised by respondent Nos.7 to 12 in their W.S. in the suit, they amended their plaint and sought partition in the entire property. As the applicants remained careless, for their act and negligence, present respondents cannot be punished. They got the decree in the year 2018, but no fruits are received by them till date. As such application being devoid of merit be dismissed.

05. Respondent Nos. 8 to 12 filed their say below Exh.39 and they have also objected the application alleging that applicants have no concern to the suit properties. They are illegitimate children, so they have no right in the ancestral properties. They have no knowledge about the partition chart, but application being devoid of merit, deserves to be dismissed with costs and compensatory costs of Rs.5,000/-.

06. Perusal of decree of R.C.S.No.283/2009 shows that defendant No.7 Dinkar Dadu Jagtap was the predecessor of the applicants. Plaintiffs averred in the plaint that he was added as necessary party in the suit, but plaintiffs have no relief to claim against him and his brother who have 1/4th share in the suit property. Applicants filed copy of examination-in-chief of the plaintiff in said suit in which also same contention is appearing. But the decree shows that plaintiffs were given half share in the entire suit properties, which includes the 1/4th share each of

defendant No.7 and his brother. Under such circumstances, certainly if the decree is executed, there are chances that it will be executed out of entire suit properties. Moreover, there are no allegation about the illegitimacy of the predecessor of the applicants in the suit. Under such circumstances, without giving opportunity of hearing to them in the present application of condoning delay, if the decree is executed, it will cause great injustice to them. So, following order is passed.

### **ORDER**

1. Application is allowed with no order as to costs.
2. In result, execution of decree in R.C.S.No.283/2009 dtd. 03.12.2018 passed by Jt. C.J.J.D. Satara, is stayed only to the extent of delivery of actual possession to the respective share holders.
3. Accordingly parties to take note and expedite the main application.

(Pronounced in open Court).

**Place : Satara.  
Dt.07.12.2024.**

**Kamala V. Bora  
District Judge-2, Satara**