



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

993 SECOND APPEAL NO. 452 OF 2025

Shri Vasant Dattu Khatke

VERSUS

Shardabai W/o Dhulappa Khatke

...

Advocate for Appellant : Mr. Nimbalkar Anirudha Arvind

Advocate for Respondents No.1 to 4 : Mr. P. M. Gaikwad

Advocate for Respondent No.7 : Mr. Y. P. Jadhav

...

WITH

CIVIL APPLICATION NO. 13669 OF 2025

IN SA/452/2025

...

CORAM : ARUN R. PEDNEKER, J.

Dated : December 23, 2025.

PER COURT :-

1. Heard.

2. The learned Counsel for the appellant submits that the appellant was a party to the suit for partition filed in the year 1991. However, the sale deed dated 28/11/1988 made in favour of the appellant was not challenged and no specific prayer in respect thereof was made in the partition suit filed in the year 1991.

3. It is further submitted that during the years 2005-2006, amendments were carried out in the plaint and the property covered under the sale deed was included in the civil suit. However, no relief was claimed against the sale deed. Thereafter, a decree came to be passed by the Trial Court which was challenged by some of the parties to the suit in appeal. In the said appellate proceedings, an application for condonation of delay was allowed and the

appeal was admitted for hearing.

4. The learned Counsel submits that in the appellate proceedings, the present appellant was deleted from the array of respondents and, on the very same day, a consent decree came to be passed, whereby the original decree stood modified and the property purchased by the appellant was also included in the modified decree. Under the modified decree, the said property is partitioned in a 50:50 share.

5. The learned Counsel for the appellant submits that after the deletion of the appellant from the appellate proceedings the subsequent compromise decree before the appellate court is not binding upon him. It is contended that the compromise entered into after his deletion cannot bind him and that the decree of the Trial Court, insofar as it concerns him, stood merged with the decree of the appellate Court.

6. It is further submitted that, pursuant to the appellate decree, execution proceedings have been initiated and the decree is sought to be executed against the appellant. In these circumstances, the appellant filed an appeal against the original decree of the Trial Court along with an application for condonation of delay. However, the said application for condonation of delay came to be rejected.

7. In the above factual backdrop, the learned Counsel submits that the following substantial questions of law arise for consideration:

- (i) Whether the decree passed by the Appellate Court on the basis of compromise would be binding upon the appellant, who was deleted from the array of parties prior to recording of the compromise ?
- (ii) Whether sufficient cause was made out for filing a belated appeal, in view of the factual circumstances, including the compromise recorded before the Appellate Court ?

8. It is also submitted that the appellant was not a party to the compromise and that at the relevant time, the original plaintiff was unwell and was represented by his son. It is contended that there exists sufficient cause for delay and that the appellant's substantial proprietary rights in respect of the property purchased under the sale deed dated 28/11/1988 are now sought to be affected.

9. The learned Counsel further submits that the sale deed was executed by the defendant No.1 through whom the plaintiff and the defendants claim title, and that defendant No.1 alone had executed the said sale deed. It is submitted that, despite this, the plaintiffs and the remaining defendants have claimed a share in the suit property which was already sold.

10. On the other hand, the learned Counsel for the respondent submits that the appellant was a party to the original suit and chose not to contest the proceedings, even before the Appellate Court. It is contended that the appellant cannot now raise objections to the decree.

11. Considering the rival submissions and the *prima facie* questions of law, as noted in paragraph No.7, which arise for consideration, the respondent is directed to file a reply to the aforesaid proposed questions of law. Till then, there shall be a stay to the execution of the decree to the extent of the property mentioned in the sale deed dated 28/11/1988 and included in the civil suit.

12. The execution proceedings in respect of the remaining properties shall proceed, and the plaintiffs and defendants shall be entitled to their respective shares therein.

13. Stand over to 30/01/2026.

(ARUN R. PEDNEKER, J.)

vj gawade/-.