

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10921 OF 2014

Surendra Kuber Kambli .. Petitioner
VS.
Digambar Gopal Kambli & Ors. .. Respondents

Mr. V. P. Sawant i/b. Mr. A. G. Toraskar for Petitioner.

Ms Bharti Mahant for Respondent No. 1.

Mr. A. S. Desai for Respondent Nos. 6A, 7A, 8A, 9A, 10, 11A, 12A, 13A, 14A, 15A, 16A, 17A, 18, 19A, 20A, 21A, 22A and 23A.

CORAM : M. S. SONAK, J.
DATE : 18 FEBRUARY, 2015

P.C. :-

1] This petition challenges the order dated 1 August 2014 made by the Maharashtra Revenue Tribunal (MRT) dismissing the petitioner's revision application against the order dated 11 November 2011 made by the Sub Divisional Officer (SDO).

2] By order dated 27 January 1979, the Tahsildar had declared the respondents as tenants in respect of the suit property. Based upon such declaration, the necessary entries in the revenue records were made in the year 1991. The order dated 27 January 1979 records that before making of the same, public notice had been duly published as required under Section 32 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 ("said Act").

3] In the year 1997, one Shantaram Kambli preferred an appeal before the SDO to challenge the order dated 27 January 1979. The petitioner was not a party to the said proceedings. The said appeal was dismissed by the SDO by order dated 20 April 1998.

4] Some time in the year 2010, the petitioner preferred an appeal to impugn Tahsildar's order dated 27 January 1979. This was preferred after a period of almost two decades from the date of the order dated 27 January 1979 and was therefore beyond the prescribed period of limitation. Along with the appeal, application was made for condonation of delay.

5] The SDO, by order dated 11 November 2011 has dismissed the appeal mainly upon two grounds:

(a) That already the SDO had vide order dated 20 April 1998 had dismissed the appeal against the Tahsildar's order dated 22 January 1979 and the said order had consequently attained finality;

(b) That the appeal was barred by law of limitation and no sufficient cause had been made out for condonation of delay.

6] The MRT, by the impugned order dated 1 August 2014 has upheld the order made by the SDO. Hence the present petition.

7] Mr. Sawant, the learned counsel for the petitioner contended that the dismissal of an appeal by Shantaram Kambli, can never be held against the petitioner because the petitioner was not even a party to such proceedings. Besides, the SDO in making the order dated 11 November 2011, has in terms accepted the petitioner's case that the respondents or their predecessors-in-title were not in cultivation of the entire suit property. On the aspect of delay, Mr. Sawant submitted that the actual mutation, by which the respondents, as legal heirs of Gopal Kambli came on record was effected some time in the year 2009. The appeal filed in the year 2010, was therefore not grossly barred by law of limitation and in any case sufficient cause was shown in the filing of the same beyond the prescribed period of limitation.

8] Ms Bharti Mahant, the learned counsel for the respondent no. 1 defended the impugned order, by pointing out that when the original order dated 27 January 1979 was made, public notices had been issued. Further, mutation in the records was carried out in the year 1991 itself, when the name of Gopal Kambli was indicated in the records. For these reasons, the learned counsel submitted that

no case whatsoever was made out by the petitioner for failure to question the order dated 27 January 1979 within the prescribed period of limitation or in any case for condonation of delay of at least two decades.

9] Having heard the learned counsels for the parties and perused the record, it does appear that the petitioner has made out no case whatsoever for condoning the delay of almost twenty years in preferring appeal against the order dated 27 January 1979 made by the Tahsildar. This order was made after the issuance of public notice. The name of Gopal Kambli was entered in the revenue records in the year 1991. There was no reason for the petitioner to wait until the names of legal heirs of Gopal Vitthal Kambli are entered into revenue records in the year 2009. That by itself, cannot constitute the starting point for either the period of limitation or even for the purposes of knowledge. In the application seeking condonation of delay, there is hardly any explanation offered for the purposes of explaining the unprecedented delay of twenty years.

10] Though it is true that the dismissal of appeal by Shantaram Kambli could not have been held against the petitioner, the fact remains that even the appeal instituted by Shantaram Kambli in the year 1997 was dismissed on the grounds of delay.

11] There is no jurisdictional error or perversity in the findings recorded by the MRT, in that the petitioner having made out no cause for condonation of delay of almost twenty years. Accordingly, no case is made out for interference with the impugned order. Petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka