

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)

CIVIL APPLICATION (S) NO. 1271 OF 2009
IN
SECOND APPEAL STAMP NO. 12276 OF 2009

(Ramchandra Narayan Huchche
and others

Appellants

Versus

Shalinibai Vishnupant Gurjar
and others

Respondents)

Mr. P.B.Shah, Advocate with Mr.M.V.Rawoul,
Advocate for appellants.
None for Respondents.

CORAM : R.K.Deshpande, J.
DATED : 3rd AUGUST, 2015.

P.C.

This civil application seeks condonation of 334 days delay caused in filing the second appeal. The suit in question was for declaration of the ownership of the plaintiffs over the suit property on the basis of the partition effected on 31.05.1967. The plaintiffs also claimed to be in possession of certain properties and therefore, the injunction is claimed restraining the defendants from interfering with their possession in respect of such properties. The plaintiffs also claimed a relief of declaration that the sale deed dated 14.10.1996 executed by the

defendant Nos. 10 to 12 in favour of the defendant Nos. 17 to 22 in respect of Survey No. 721/2 is not binding upon them.

The trial Court dismissed Special Civil Suit No. 23 of 1998 on 27.06.2001 and the lower appellate Court by its judgment and order dated 05.03.2008 passed in Civil Appeal No. 264 of 2001 set aside the decision of the trial Court and the suit has been partly decreed. The defendant Nos. 17 to 22 are before this Court in this second appeal along with the application for condonation of delay.

The notices were issued on the application for condonation of delay. The said application is dismissed against respondent Nos. 9, 10, 15, 16, 17, 23, 24, 27 and 28. The respondent Nos. 1 to 12 are the original plaintiffs. The matter is pending for the orders on the application for condonation of delay.

I have also heard the learned counsel for the appellants on the merits of the matter, as the appeal is pending for admission since 2009. In fact, by virtue of abatement of civil application against some of the plaintiffs, the appeal in its entirety abates.

Be that as it may, the lower appellate Court has recorded the finding that the partition

dated 31.05.1967 has been proved and the properties in question have fallen to the share of the plaintiffs and they are, therefore, owners of it. Though, the defendant No. 10 sold the property to defendant Nos. 17 to 22 on 14.10.1996, the suit proceeded *exparte* against the defendant No.10.

In view of this factual position, the contention of the learned counsel appearing for the appellants that during the pendency of appeal before the lower appellate Court, the defendant No. 10 died and his L.Rs were not brought on record and therefore, the appeal itself abated, does not bear any substance. Once the finding of the Courts below is accepted that the trial Court has proceeded *exparte* against the defendant No.10 and during the pendency of the appeal the defendant No. 10 died, the question of bringing his L.Rs or declaring the appeal to be abated does not at all arise.

The appellants who are the defendant Nos. 17 to 22 have not entered the witness box to establish their plea that they are the *bonafide* purchasers for valuable consideration. This is the finding recorded by the lower appellate Court in para 25 of its judgment. The Courts have relied upon the partition deed dated 31.05.1967 to hold that the property which was sold by the defendant No.10 was owned by the plaintiffs. Hence, no fault

can be found even on merits of the matter requiring this Court to frame a substantial question of law. The second appeal is dismissed. Consequently civil application stands dismissed.

(R.K.DESHPANDE, J.)

Rvjalit