

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

SECOND APPEAL NO. 334 of 2015

(Vishwasrao Vasantrao Ghorpade
(Since deceased thr his L.Rs. Appellants

Versus

Anita Rajendra Ghorpade Respondents)

Mr. Ajit M. Savagave, Advocate for appellants-
defendants

Mr. Vijay Killedar, Advocate, for Respondent.

CORAM : R.K.Deshpande, J.

DATED : 15th JUNE, 2015.

P.C.

The trial Court passed a preliminary decree for partition by its judgment and order dated 14.09.2009. First appeal was preferred before the lower appellate Court along with the application for condonation of delay of 3 years and 1 month. The said application has been rejected by the lower appellate Court and hence, the original defendant No. 4 is before this Court through L.Rs in this second appeal.

The learned counsel for the appellant has urged that the lower appellate Court has failed to take into consideration the objections raised to the report submitted by the Commissioner and accepted by the Court. He has further urged that the lower appellate Court ought to have condoned the delay caused in filing the appeal, as the appellant was not well and was suffering from heart-disease.

The preliminary decree passed by the Court for partition and separate possession has attained the finality. In the final decree proceedings, the Court Commissioner was appointed, who has submitted a report Exh. 24. The Court Commissioner has not been cross examined and the trial Court accepted the report. The appellate Court has passed an order dismissing the Misc. Application No. 1 of 2013 by holding that no sufficient cause is made out for condonation of delay of 3 years and 1 month.

I have gone through the order passed by the lower appellate Court. The order is supported by the reasons. The court has recorded the finding that no sufficient cause is made out for condonation of delay and the appeal has been dismissed as barred by limitation. The appellate court has taken a possible view of the matter which does not give rise to any substantial question of law.

The learned counsel for the appellant has relied upon the decision of this Court in the case of ***Shewantabai Kashinath Kumbhare thr L.R and others vrs. Purushottam Mahadeorao Ambatkar***, reported in **2014 (2) Mh.L.J. 848**, for the proposition that the court should not adopt hyper-technical approach while considering the application for condonation of delay. The proposition of law laid down cannot be disputed. The question as to whether sufficient cause is made out or not depends upon the facts and circumstances of the case. The appellate Court has

taken into consideration the explanation and has recorded the finding that sufficient cause has not been made out and the appeal has been dismissed as barred by period of 3 years and 1 month. No substantial question of law is involved. The second appeal is dismissed.

(R.K.DESHPANDE, J.)

Rvjalit