

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

CIVIL APPLICATION (S) NO. 94 OF 2010
IN
SECOND APPEAL STAMP NO. 26698 OF 2009

(Shri Abdalla Haji Tahir Jalgaonkar
and others

Appellants

Versus

Shri Usman Mahamud Raut and
others

Respondents)

Ms. T. Dalvi, Advocate for appellants.

Ms. Gauri Godse, Advocate, for Respondents.

CORAM : R.K.Deshpande, J.

DATED : 3rd AUGUST, 2015.

P.C.

This application is for condonation of 8 days delay in preferring second appeal.

The notices of this civil application were issued to the respondents and it seems that the appeal has abated against the respondent no.1. The abatement was set aside and the L.Rs of original defendant No.1 are brought on record. They are served and the learned counsel Ms. Gauri Godse appears for them. Thus, the contesting respondents are all served.

Heard the learned counsels appearing for the parties. After going through the contents of the application which remained uncontroverted, I am satisfied that sufficient cause is made out for condonation of delay. Hence, civil application is allowed. Delay caused is condoned. Civil application stands disposed of.

S.A.St. No. 26698 of 2009

Heard for admission by consent of the learned counsels appearing for the parties.

The trial Court dismissed Regular Civil Suit No. 64 of 1996 on 01.08.2006 and the Civil Appeal No. 122 of 2008 preferred by the plaintiffs has also been dismissed on 14.07.2009. This second appeal is against the concurrent findings of fact preferred by the plaintiff No.1.

The question involved before the Courts below was whether the registered sale deed dated 25.03.1985 was in fact executed by the plaintiff No.6 shown to be the real owner of the suit property, in favour of the sole defendant. The contention was raised before the Courts below by the plaintiffs that the plaintiff No.1 was not the sole owner of the suit property, it was an ancestral property. At the time of execution of sale deed

dated 25.03.1985, the plaintiff Nos. 1 to 5 were minors and the plaintiff No. 6 could not have sold the share without there being any legal necessity. The courts below have held that no evidence is brought on record by the plaintiffs to show that the property was the ancestral property. The revenue record though indicated the names of all the plaintiffs, the Courts have held that there is nothing on record to show that the suit property was the ancestral property. The courts have also held that no evidence is brought on record to show that the plaintiff Nos. 1 to 5 were majors at the time of execution of sale deed. It is also the finding recorded that no evidence is brought on record to show that the plaintiff No. 6 who executed the sale deed personally was not at that time in India. The availability of any such evidence was not brought to my notice. No substantial question of law, therefore, arises. The second appeal is dismissed.

(R.K.DESHPANDE, J.)