

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.223 of 2011

=====

Sanjay Singh & Ors				Appellant/s
	Versus			
Gulbadan Devi & Ors				Respondent/s

=====

with
First Appeal No.222 of 2011

=====

Sanjay Singh & Ors				Appellant/s
	Versus			
Gulbadan Devi & Ors				Respondent/s

=====

Appearance :
(In FA No.223 of 2011)
For the Appellant/s : Mr. Atul Kumar Pandey
For the Respondent/s : Mr.
(In FA No.222 of 2011)
For the Appellant/s : Mr. Atul Kumar Pandey
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

12 18-08-2016 Heard learned counsel Mr. Atul Kumar Pandey for the appellants, learned counsel Mr. Dronacharya for the respondent no. 1(i) and 1(iii) and learned counsel Mr. Jashawir Singh Arora for respondent no. 1 (i) and 1 (ii) on the Interlocutory Application No. 8244 of 2011 i.e. limitation application.

The appellants have filed first appeal no. 222 of 2011 against the preliminary judgment and decree dated 28.11.2008 passed by Sub Judge I, Rohtas at Sasaram in Title Suit No. 276 of 2002 on 30.11.2011. The First Appeal No. 223 of 2011 is

against final decree.

Office reported that the appeal against preliminary decree is barred by two years nine months. On the limitation application, notices were issued to the respondents.

Learned counsel Mr. Dronacharya and the learned counsel Mr. Jashawir Singh Arora for the plaintiff-respondents submitted that the decree is in their favour. Therefore, only, they are required to be heard in limitation matter as such non service of the notices on the other respondents, the limitation application may not be kept pending. I, therefore, heard the parties on this limitation application. However, learned counsel Mr. Jitendra Prasad Singh has also appeared on behalf of the respondent nos. 2 to 4. He is supporting the respondents.

The appellants' explanation regarding the delay of two years nine months is that both the parties were negotiating to compromise the suit and this negotiation was started in the year 2006. Therefore, the defendant-appellants left the *Parvi* in the suit and moreover, the father of the present appellant no. 1 was doing *Parvi* in the partition suit. When there was talk of compromise between them, they left the Parvi and have no knowledge about the pendency of the suit or proceeding or the preliminary decree or final decree. The appellant received a



notice from C.O. in mutation of the name, the appellants came to know about the preliminary judgment and also final judgment and decree. Therefore, the appellants have filed the appeal against the preliminary judgment and decree being First Appeal No. 222 of 2011 and against final decree i.e. First Appeal No. 223 of 2011. In support of their contention, the appellants have annexed order-sheet of the Court's order dated 12.04.2006, 20.04.2006 and 25.04.2006. The further ground is that so far as the father of the appellant no. 1 is concerned, it is stated that he is simple villager and according to the assurance of the defendant-respondent about compromise he left the Parvi and he was ill and incapable of doing proper Parvi in the year 2005.

A counter affidavit has been filed by the learned counsel Mr. Dronacharya for the respondent no. 1(i) and 1(iii).

Learned counsel Mr. Dronacharya submitted that it is wrong to say that the appellant has no knowledge about the pendency of the suit or proceeding or the preliminary decree or final decree. According to the learned counsel, his father was there and he never appeared in the case after filing written statement. No compromise application was filed. According to the learned counsel, the order-sheet filed by the appellant is of



the year 2006 but the judgment and preliminary decree has been passed on 28.11.2008. For this long two years period, there is no explanation at all. The learned counsel further submitted that after the preliminary decree, Pleader Commissioner was appointed and after measurement of the land allotted the separate Takhta to the four co-shares and allotted 1/4th share to the plaintiff-respondent. In such circumstances, it cannot be relied upon that the appellant or his father was not knowing the proceeding in the case. It may be mentioned here that in First Appeal No. 223 of 2011, a counter affidavit has been filed by the respondent no. 1 (i) and 1(ii) wherein a plaint of another Title Partition Suit being Partition Suit No. 75 of 2015 has been annexed. It is submitted that pursuant to this final decree, the other respondents who had also not contested the suit have filed a separate suit for partition between the heirs of one branch. The learned counsel further submitted that the father of appellant no. 1 is respondent in these first appeals who was defendant in the partition suit. The appellant's case is that his father was doing Parvi in the case but he left Parvi. The father is not challenging the judgment and decree nor he has sworn the affidavit of the application filed by the appellant and he could not have affidavited because he is the respondent. The learned

counsel further submitted that on the death of Ambika Singh, his son inherited the property according to the Hindu Succession Act and the appellant no. 1 being the grandson of Ambika Singh is not an heir in persons of his father Sakaldeep Singh. Therefore, at his instance, the first appeal is not maintainable.

Learned counsel for the respondents further submitted that in fact, a false affidavit has been filed denying the knowledge of the proceeding. According to the learned counsel at paragraph-12 of the impugned preliminary judgment, it will appear that some of the witnesses have been cross-examined by the defendants, therefore, it is incorrect to say that they had no knowledge about the proceeding of the suit. Learned counsel further submitted that in fact, the common ancestor of the parties Surya Nath Singh, had four sons namely, Seoji Singh, Radha Singh, Ambika Singh and Girja Singh. The original plaintiff is the only daughter of Seoji Singh, who is married and therefore, the branches of other three sons of Surya Nath Singh with intention to deprive the plaintiff from her right are applying delatory tactics and therefore, they intentionally left Parvi and now with false statements they filed these first appeals after such a long period and are trying to take undue

advantage of the process of the court as it is generally observed by the Court that while considering the Limitation Act Litigation, the Court should liberally approach the matter.

The learned counsel for the parties submitted that the limitation application i.e. Interlocutory Application No. 8244 of 2011 filed in this First Appeal No. 222 of 2011 be rejected and since the same plea has been taken in the other first appeal arising out of final decree in Interlocutory Application No. 8243 of 2011 be also rejected and both the appeals be dismissed as barred by law of limitation.

From perusal of the record, it appears that the plaintiff had filed the suit claiming her 1/4th share in the suit property on the ground that she is the daughter of Sheoji Singh and the other three sons of Surya Nath Singh have 1/4th share each.

Two sets of contesting written statement were filed. There was talk of compromise between the parties in the year 2006, which would be evident from the order-sheet annexed with the limitation application. However, no compromise application was filed by the parties and the court granted time to the plaintiff to examine witnesses if no compromise application is filed by the next date. When there was no compromise the plaintiff started examining her witnesses.



From perusal of paragraph-12 of the impugned judgment, it appears that some of the witnesses were cross-examined by the defendants. Thereafter, the Parvi was left and no steps were taken by the defendants. Ultimately, therefore, on the basis of the evidences produced by the plaintiff, the court below decreed the plaintiff suit to the extent of 1/4th share.

The explanation for delay has been given by the appellant no. 1 that his father was the Parvikar as the appellant no. 1 was in military service (appellants no. 2 and 3 are minor sons of appellant no. 1). Because of assurance given by the plaintiff that there should be compromise between the parties and that she will not proceed with the case, no Parvi was made on behalf of the defendant is concerned, it may be mentioned here that according to the appellant himself he was residing outside and the father is not saying as to why he left Parvi in the suit as according to the appellant no. 1 himself his father was doing Parvi. It further appears that the plaintiffs prayed for time before the court below on the ground of negotiation between the parties regarding compromise. The defendant never appeared before the court and never prayed for time that they are negotiating for compromise with the plaintiff. However, from the order-sheet, it appears that the plaintiff took time in the year

2006. The defendant never appeared nor ever stated that because they are compromising, therefore, the plaintiff may be granted time. The court cannot wait for indefinite period on the ground of negotiation of compromise between the parties.

The judgment has been passed in the year 2008 i.e. after two years. The appellant as well as the father of the appellant no. 1 were knowing the fact that still that day, no compromise application had been filed but they did not even care to see the proceeding in the court below. It is not case that they had no notice rather it is admitted fact that they had filed written statement and even some of the defendants had cross-examined the witnesses.

From the above discussion of the facts, it becomes clear that this plea that the father was simple villager and assurance was given that the plaintiff will not proceed with the case and therefore, Parvi was left appears to be made for the purpose of these First Appeal and this explanation offered appears to be concocted and fanciful.

The Hon'ble Supreme Court in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar 2014 (1) PLJR 290***, Supreme Court has given some guideline which should be observed by the



court while considering the limitation application in this matter paragraph-15 of the said judgment may be referred to. No doubt there should be liberal approach but at the same time lack of bonafides imputable to a party is significant and relevant fact. The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered freeplay. The conduct, behaviour and attitude of a party relating to inaction intentionally and for ulterior motive are important factors. This principle cannot be given a go by in the name of liberal approach.

From the above facts, it further appears that on the death of Ambika Singh, the property will go to Sakaldeep Singh, who is the father of appellant no. 1 and in his presence according to Clause 1 mentioned in schedule to the Indian Succession Act, the son of Ambika Singh is only heir i.e. Sakaldeep Singh is the owner of the property. He is not challenging the impugned judgment and decree. He is respondent. He is not furnishing any explanation as to why he did not put Parvi in the case. It is not his case that he was unaware of the proceeding in the court below. In my opinion, therefore, all the explanation furnished by the appellant appears to be concocted, fanciful and incorrect statements and made



only with a view to get the long delay condoned. The Hon'ble Supreme Court in the case of ***Pundlik Jalam Patil (D) By Lrs Vs. Executive Engineer, Jalgaon, 2008 (17) Supreme Court Cases 448*** has held that incorrect statement made in the application seeking condonation of delay itself is sufficient to reject application without any further enquiry as to whether the averment made in the application reveals sufficient cause to condone the delay.

In the present case, from the facts stated above, it becomes now clear that the appellants only with a view to deprive the plaintiff-respondent from her property and to delay filed these first appeals before the Court and have made incorrect statements to condone the delay.

The Hon'ble Supreme Court in the case of ***Ramrameshwari Devi v. Nirmala Devi, (2011)8 Supreme Court Cases 249***, has held that imposition of actual, realistic or proper costs and / or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigant. Imposition of heavy costs would also control unnecessarily adjournments by the parties. While imposing costs we have to take into consideration pragmatic realities and be realistic as to what the



defendants or the respondents had to actually incur in contesting the litigation before different Courts. We have to also broadly take into consideration the prevalent fee structure of lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards tying, photocopying, court fee, etc.

In the present case, I have already held that incorrect statements have been made by the appellant and dragged the respondents to this Court after such a long period of decision by the trial court disposing of the partition suit finally and therefore, in my opinion, the appellant is liable to pay costs to the respondents and that is what the provision as contained in Section 35 sub-Section 2 of the Code of Civil Procedure provides and therefore, accordingly, the Interlocutory Application filed by the appellant i.e. limitation application filed in this first appeal no. 222 of 2011 being I.A. No. 8244 of 2011 and the I.A. No. 8243 of 2011 filed in First Appeal No. 223 of 2011 are hereby rejected with costs of Rs. 5000/- + 5000/- total being 10,000/- to be deposited in the court below within two months failing which the costs shall be realised by the plaintiff-respondent through the process of Court. Since I

have rejected the interlocutory application filed in First Appeal No. 223 of 2011 also a copy of this order be attached with the said first appeal and this order shall govern the said first appeal also.

Since the limitation application has been rejected with costs as aforesaid, now, both the First Appeals are dismissed as time barred. The interim order if any stands vacated. The other I.A. accordingly stands disposed off.

(Mungeshwar Sahoo, J)

ajaypd./-

U			
---	--	--	--