

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.375 of 2013

=====

1. Birendra Sharma Son Of Late Sahdeo Sharma Resident Of Village- Algana,
P.S.- Kako, District- Jehanabad
2. Sushila Devi Wife Of Birendra Sharma Resident Of Village- Algana, P.S.- Kako,
District- Jehanabad

.... Appellants.

Versus

Anil Sharma Son Of Birendra Sharma Resident Of Village- Algana, P.S.- Kako,
District- Jehanabad

.... Respondent.

=====

Appearance :

For the Appellant/s : Mr. Vishal Saurabh, Adv.

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-04-2016

V.Nath, J.

Heard Mr. Vishal Saurabh, learned counsel

appearing for the appellants.

The defendants are the appellants in this appeal
against the judgment and decree of affirmance by the appellate court
below dismissing the appeal of the defendant as barred by limitation.

The suit was filed by the plaintiff for
declaration of his title and for further declaration that the sale deed
dated 28.06.1982 standing in the name of the defendant was not
binding upon the plaintiff and was forged and fabricated document
conferring no title to the defendant. The defendants appeared and
contested the claim of the plaintiff by filing written statement. It also
transpires from the judgment of the trial court that the defendants

produced only one witness on their behalf i.e. the defendant no.2 himself. No other oral or documentary evidence was produced on behalf of the defendants. Eventually, the suit was decreed. Thereafter the title appeal was filed by the defendants. As the said title appeal was filed after the expiry of limitation, a petition for condonation of delay was also filed praying for condonation of delay in filing the appeal. After concluding that the appellants have failed to explain the delay in filing the appeal, the prayer for condonation of delay was rejected by the appellate court below which has, accordingly, refused to admit the appeal by the impugned order.

Mr. Vishal Saurabh, learned counsel appearing for the appellants has submitted that the valuable rights of the parties over immovable property should not be denied on technical grounds including the ground of limitation. It has been propounded that the appellate court below should have been taken liberal approach in the matter and should have considered the facts stated in the condonation petition that the appellants were prevented by sufficient cause in not filing the appeal within time. It has, however, been accepted that there was no satisfactory explanation for the period between 06.07.2013 to 11.07.2013 which fact has also been found by the appellate court below. It has also been contended on behalf of the appellants that in order to do complete justice between the parties the delay ought to

have been condoned. The reliance has been placed on the decision of the apex court in the case of *Leela Soni Vs Rajesh Goyal*, AIR 2001 SC 3601.

After perusal of the judgment and order by the courts below and considering the submissions, it is manifest that the appeal filed by the defendants against the judgment and decree passed in the suit, has not been admitted for hearing holding that the defendants have failed to explain the delay in filing the appeal. There is no dispute that the appeal was filed belatedly and therefore a petition for condonation of delay was filed. However, the appellate court below has considered the case of the appellants as made out in the condonation petition for explaining the delay and has come to the finding that though the memo of appeal was filed on 12.07.2013 even when the certified copy of the judgment and decree of the trial court was supplied on 06.07.2013. In view of the absence of any explanation from 06.07.2013 up to 12.07.2013 which fact has also been accepted on behalf of the appellants during the course of submissions, the finding by the appellate court below that the appeal was barred by limitation cannot be said to be perverse.

In view of the provision as contained in Sections 100 and 101 C.P.C. a second appeal can be entertained only when a

substantial question of law is involved. It has been repeatedly laid down by the apex court that the possibility of a second view on a question of fact can never be a question of law. The scope of exercising jurisdiction in equity is also not available at the second appellate stage and in any view of the matter it is clearly evincible that in order to grant relief to the appellants in this second appeal the finding of fact recorded by the appellate court would have necessarily to be interfered with for the purpose of taking another view. In the case of *Damodar Lal Vs. Sohan Devi, AIR 2016 SC 262* the apex court , while dealing with the element of perversity has observed that the safest approach on perversity is classic approach on the reasonable men's inference on the facts and if the conclusion is a possibility, there is no perversity.

For the aforesaid reasons and discussions, this Court does not find that this appeal involves substantial question of law arising for consideration.

This second appeal is accordingly dismissed.

(V. Nath, J)

Nitesh/-

U			
---	--	--	--