

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 487 of 2014

Haldhar S/o Hannu Aged About 59 Years R/o Village- Ilachpur, Tah. Lormi,
Distt. Mungeli C.G.

---- Appellant

Versus

1. Abdul S/o Hannu Aged About 52 Years R/o Village- Ilachpur, Tah. Lormi,
Distt. Mungeli C.G.
2. Smt. Pirathi Bai W/o Sahoran Satnami Aged About 54 Years R/o
Godkhamhi, Tah. Lormi, Distt. Mungeli C.G.
3. Smt. Dhaniya Bai W/o Thanwar Satnami Aged About 60 Years R/o Village-
Ilachpur, Tah. Lormi, Distt. Mungeli C.G.
4. State Of Chhattisgarh Thru- The District Collector, Bilaspur (Now Mungeli)
C.G.

---- Respondents

Shri Malay Kumar Bhaduri, counsel for the appellant/s.
Shri Ramakant Pandey, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

22/01/2016

This appeal is directed against order dated 17/10/14 by which, the appeal has been dismissed as barred by limitation.

2. Learned counsel for the appellant argued that the leaned lower Appellate Court committed gross illegality and perversity in rejecting application for condonation of delay in filing appeal as the appellant had disclosed sufficient cause for condonation of delay in the application under Section 5 of the Limitation Act wherein it was clearly stated that the appellant came to know about the revenue proceedings relating to partition of holding upon receipt of notice dated 29/03/2011 when he came to know that on the basis of judgment and decree of the Trial Court, the respondent is claiming partition which is prejudicial to the

interest of the appellants.

3. It is the case of the appellant that the judgment and decree of the Trial Court was obtained by fraud. The appellant came to know about this fraud only when he realised that under the compromise decree, he was made to agree on unconscionable terms. Upon information of proceedings of partition in the year 2010, certified copy of revenue records were obtained on 07/04/2011 followed by receipt of certified copy of judgment and decree of the Trial Court on 02/07/2011. Soon thereafter, the appeal has been preferred. Thus, delay was bonafide.

4. The appellant along with his brother – Abdul filed a suit for declaration and injunction against his two sisters. In that suit, the parties arrived at compromise and settled their dispute amicably and thereafter, filed an application under Order 23 Rule 3 CPC for passing compromise decree. The Trial Court recorded statement of all the parties including statement of the appellant also, where he stated before the Court that he is agreeable to the terms and conditions of compromise decree and all the parties have entered into such compromise without any fear, coercion or lure. After arriving at full satisfaction in this manner, a compromise decree was passed by the Trial Court on 21/08/09.

5. After almost two years, First Appeal was preferred by the appellant against the co-plaintiff and defendants stating that the appellant is illiterate though he can sign the documents. It was stated that the land has been fraudulently recorded by co-plaintiff- Abdul, his brother in the revenue records. At this stage, the appellant realised that the compromise arrived at between the parties was not fair. The reason assigned in the application for condonation of delay in filing appeal is that when the appellant received notice of partition, then he realised that partition was not fair.

6. The reason assigned seeking condonation of delay in filing appeal hardly constitute a ground for condonation, besides lacking bonafides. The compromise application was moved by all the parties including the appellant. Not only this, his statement was also recorded by the Trial Court where terms and conditions of the compromise were clearly explained to the parties and appellant agreed to the same. It was only thereafter, compromise decree was passed which was fully within the notice and knowledge of the appellant.

Receipt of notice from the Revenue Courts has nothing to do with the knowledge of the judgment and decree which was passed after recording

evidence of the appellant by the Trial Court. It is apparent that later on, the appellant changed his mind attempting to assail the decree passed on the basis of compromise between the parties to which he himself was a party. The application for condonation of delay in filing appeal completely lacking bonafide was rightly rejected by the Court below. The appeal is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge