

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

SECOND APPEAL NO. 123 OF 2013

Janabai w/o. Babu Shahapure **....Appellant.**

Versus

Mohan s/o. Sugriv Shahapure
and ors. **....Respondents.**

Mr. S.M. Vibhute, Advocate for appellant.

CORAM : T.V. NALAWADE, J.
DATED : 8th March, 2016.

ORDER :

1. The appeal is filed against the order made by District Court, Omerga in M.C.A. No. 5/2009. The application filed for condonation of delay of 17 years caused in filing appeal against judgment and decree of Regular Civil Suit No. 687/1987, which was pending in the Court of Civil Judge, Junior Division, Omerga, is dismissed by the District Court. The suit was filed by present respondent - Mohan for relief of declaration and injunction. The appellant was defendant no. 7 in the said suit. Heard the learned counsel for appellant.

2. The suit was filed in respect of agricultural land Survey No. 300/1/1, admeasuring 94 R. and Survey No. 300/4,

admeasuring 2 Hectors 29 R., both lands situated at village Naichakur, Tahsil Omerga, District Osmanabad. It is the case of plaintiff that property was purchased by plaintiff from one Vyankat Bapu Pimple under registered sale deed and the defendants have no concern whatsoever with the suit properties. Allegations of obstruction to the possession of plaintiff by the defendants was made.

3. Defendant Nos. 1, 3, 4 and 5 appeared, but they did not file written statement. Exparte order was made against the remaining defendants. Thus, the suit was not contested by the defendants and so, the decree was given by the Trial Court.

4. For getting the decision, plaintiff produced original sale deed dated 20.8.1987 and copy of mutation, which was made on the basis of sale deed. 7/12 extract was also produced to show the possession. As there was no evidence in rebuttal, there was no other alternative before the Trial Court than to give the decree.

5. In the application filed for condonation of delay in District Court, present appellant had contended that plaintiff had given threats to the appellant and her husband of life and due to

the threats, they were not turning up. It is contended that the plaintiff then committed murder of husband of present appellant and so, the appellant shifted to other place and she did not contest the matter. Before the District Court, no record is produced to show as to when incident of murder took place, for how much period case was going on etc. As huge delay of 17 years was caused, the District Court held that no sufficient cause was shown by the present appellant. As the condonation of delay is within the discretion of the Court, in ordinary circumstances, the Appellate Court is not expected to interfere in the order made by the Court, which has refused to exercise the discretion. To ascertain the nature of right of the present appellant in the suit properties, this Court asked the advocate of the appellant to show some record on the basis of which, it can be said that there is some arguable case to the appellant.

6. Copies of some mutations in respect of portions of land Survey No. 300/A are produced. The mutations show that two portions of this land were sold by Sugriv Jayawant Shahapure and Babu Jaywant Shahapure, each sold 1 Hectore 19 R. to Bharat Mahadev Shinde under registered sale deeds dated 11.4.1987. Thus, if at all some portion was there with the husband of the appellant, that area was sold. Copy of mutation

dated 17.8.1987 shows that Vyankat Babu Pimple, vendor of plaintiff, had claimed that Survey Nos. 300/3 and 300/4 were his ancestral properties and the name of Sugriv Shahapure, brother of husband of appellant was entered in the revenue record by mistake. Sugriv gave statement and due to statement of Sugriv, revenue record was corrected in the year 1987 itself. Thus, when Vyankat Pimple sold aforesaid two properties to the plaintiff, there was no right or interest of appellant's husband or brother of husband of the appellant in suit properties. Thus, there is virtually no record with the appellant to show that they have any interest in the suit suit properties. As there is no arguable case, this Court holds that delay does not deserve to be condoned. Due to these circumstances, this Court holds that no substantial question of law as such is involved in the matter.

7. In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

ssc/