

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 73 OF 2016
AND
CIVIL APPLICATION NO. 1215 OF 2016
IN
SECOND APPEAL NO. 73 OF 2016

- 1] Madhukar S/o Pandhari Shinde,
Age : 49 years, Occu.: Agri.,
R/o. Wakharwadi, Post. Dhoki,
Tq. Dist. Osmanabad
- 2] Kamalakar S/o Pandhari Shinde,
Age : 39 years, Occu. : Agri.,
R/o. As above
- 3] Bai Balasaheb Jadhav,
Age : 29 years, Occu.: Household,
R/o. Shirala, Tq. Dist. Latur
- 4] Kisanabai W/o Pandhari Shinde
Age : 64 years, Occu.: Household,
R/o. Wakharwadi, Post. Dhoki,
Tq. Dist. Osmanabad

.. Appellants/
Applicants
(Orig. Defendants)

Vs.

Sheshabai Ramdas Tat
Age : 59 years, Occu.: Household,
R/o. Wakharwadi, Post. Dhoki,
Tq. Dist. Osmanabad

.. Respondent
(Orig. Plaintiff)

Mr. S.B. Bhapkar, Advocate for the appellants/applicants
Mr. Vivek V. Jadhav, Advocate and Mr. G.N. Kulkarni, Advocate for the
respondent

CORAM : SUNIL P. DESHMUKH, J.
DATE : 09/01/2017

ORAL JUDGMENT :

1. Heard learned counsel for the parties. The appellants, who are defendants in regular civil suit no.170 of 2008 are before this Court in second appeal challenging the order on miscellaneous application no.158 of 2014 dated 12/01/2016 whereunder their request, to allow them to deposit the costs imposed by the Court while condoning the delay under order dated 30/7/2010, has been turned down.

2. Learned counsel Mr. Bhapkar for the appellants contends that the parties are close relatives. As a matter of fact, plaintiff is one of the sisters of appellants. She had instituted proceedings for partition and separate possession of property. According to learned counsel, as a matter of fact, partition had taken place of ancestral properties during lifetime of father of the parties. However, since the parties were closely related, it was deemed appropriate and considered instead of prosecuting the suit, the parties were conceiving amicable settlement. The suit, as such, was decided *ex parte*. The position continued even after the decree had been passed. However, with a view to keep the litigation alive, so long as desirable settlement takes place, an appeal was sought to be preferred which was belated and the application had

been moved for condonation of delay which under aforesaid order of 30/7/2010, had in-fact, been condoned subject to payment of costs of Rs.1000/- within a period of seven days from said date. As stated above, since the parties were under impression that the matter one day or other would be settled, the amount could not be deposited within the stipulated time frame and implication had not been realised. Though apparently there are some proceedings in execution, yet there had been an understanding that the matter deserves to be settled by the parties in earnest.

3. However, it became imperative that the appeal would be required to be prosecuted, as time rolled over it was realised that it would move forward, if only amount is deposited, as such, application for letting the appellants to deposit the amount had been made, which came to be rejected.

4. Learned counsel for the appellants further contends that the consideration which has weighed with the appellate Court would reflect that the appellants have been considered to be deficient in explaining the delay from the date of appearance in execution proceedings till the date of filing the present application for allowing them to deposit the amount. He submits that since the Court impliedly has considered that the delay from 2010 to 2013 is explained as the matter was being

considered for amicable settlement, the same consideration ought to have weighed with the Court, however, on this occasion perhaps the Court dissuaded itself from entertaining the application. He submits that, in any case, the case on merits, it appears will have to be dealt with and material produced by parties may bring about amicable settlement. Had an opportunity been given, perhaps some evidence could have been led. However, this may not be necessary in the present case and latitude be given in the circumstances.

5. Learned counsel Mr. Jadhav appearing for respondent/plaintiff contends that the appellate Court had been lenient while condoning the delay and had directed the appellants to deposit a meagre sum of Rs.1000/-, however that too had not been paid. The reason put forth about the amicable settlement taking place is vacuous and there is no material in support of the same produced at any point of time. He, thus, submits that the reason given is merely an eye wash and should not be believed.

6. Looking at aforesaid submissions and particularly that plaintiff is one of the sisters and the property is ancestral in nature, contention on behalf of the appellants is that partition had taken place around the year 1987 and that the parties being real brothers and sisters and the fact that the execution proceedings were initiated only

in 2013 in respect of decree of 2008, some latitude to the contention on behalf of the appellants would be required to be given about the settlement taking place. This lends quite some credibility to the contention on behalf of appellants. The reason as such, as contended on behalf of the respondent does not appear to be absolutely vacuous.

7. I think an opportunity can be expediently made available to the appellants to take up their case on merits by imposing certain costs, which may take care of inconvenience caused to the plaintiff in the process.

8. As indicated above, the inconvenience caused in the process to the plaintiff to a large extent would be mended by imposing reasonable costs on the appellants and directing the appellate Court to proceed with the appeal expeditiously preferably within a period of six (6) months from the date of receipt of the writ of this Court.

9. In the circumstances, the impugned order dated 12/1/2016 in miscellaneous application no.158 of 2014 stands set aside and Civil Application no.1215 of 2016 stands granted subject to payment of costs of Rs.50,000/- (Rs. Fifty Thousand only) to the respondent-plaintiff. The costs are to be deposited within a period of eight (8) weeks from the date of receipt of the writ of this Court with the appellate Court, for its onward disbursement to the plaintiff-respondent.

10. In case of failure to deposit the amount within the stipulated period, this order shall stand recalled without further reference to the Court, and the impugned order would stand restored.

11. Interim relief, if any, to continue to operate until the interim relief application is decided by the appellate Court.

12. The above order does not affect the maintenance of the darkhast proceedings, and its progress would be subject to orders of appellate court.

13. Second Appeal no. 73 of 2016 stands disposed of accordingly.

[SUNIL P. DESHMUKH]
JUDGE

arp/