

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABA

CIVIL APPLICATION NO. 12392 of 2017
IN
SECOND APPEAL (STAMP) NO. 21241 OF 2017

Chandrakalabai Shivaji Khedkar
age 51 years occupation household
R/o Narala, Paithan Taluka Paithan Dist. Aurangabad.

...PETITIONER

VERSUS

Shaikh Sattar Baba Miyan
age 77 years occupation Pensioner
R/o Hamalwada, Aurangabad Dist. Aurangabad

...RESPONDENT

Mr. Girish V. Wani, Advocate for petitioner

CORAM : NITIN W. SAMBRE, J.
DATE : 4th October, 2017

ORAL ORDER :

This application is by original plaintiff seeking condonation of delay of 1897 days caused in preferring present Second Appeal.

2. Cause cited for condonation of delay is that the appellant was not keeping good health and, as such, the delay of about more than five years is caused in preferring present Second Appeal.

3. In addition, Shri Wani, learned Counsel for the appellant, who is heard on merit, submits that both the Courts below have failed to appreciate the factum of possession of the present appellant, particularly, when the First Appellate Court recorded that the title of the present appellant vide Exh. 58 sale deed dated February 28, 1989, was proved.

4. So far as the issue of title is concerned, the parties to the appeal have admitted title of the present appellant to the suit property, however, appellant has failed to establish the exact location of the property as she was unable to prove boundaries of her property, as is apparent from her evidence, particularly, her cross-examination.

5. There are concurrent findings recoded by both the Courts below on the issue of possession and entitlement for injunction though the First Appellate Court has recorded finding of title in favour of present appellant.

6. In the aforesaid backdrop, in my opinion, neither case for condonation of delay nor the case on merit is made out. Appeal, as such, fails and stands dismissed.

(NITIN W. SAMBRE, J.)

pjm