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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.13666 OF 2010
IN/WITH
SECOND APPEAL (ST.) NO.29967 OF 2010**

Madhukar Deorao Deshmukh,
Age : 62 years, Occu. Agril. &
Pensioner, R/o Pimparkhed,
Tq. Paranda, Dist. Osmanabad

..APPLICANT/APPELLANT

VERSUS

1. Pandit Bhagwan Dayal,
Age : 50 years, Occu. Agril & Service,
R/o Paranda, Tq. Paranda,
Dist. Osmanabad

2. Gajanan s/o Pandit Dayal,
Age : 27 years, Occu. Agril.,
R/o as above

3. Suresh Deorao Deshmukh,
Age : 59 years, Occu.Agril.,
R/o Pimparkhed, Tq. Paranda,
Dist. Osmanabad

..RESPONDENTS

Mr D.D. Madke, Advocate holding for Mr S.Y. Mahajan, Advocate for
respondents no.1 & 2

CORAM : N.W. SAMBRE, J.

DATE : 27th June, 2017

ORAL ORDER

This Civil Application for condonation of delay along with Second
Appeal is pending since last about seven years.

2. There is delay of 88 days caused in filing the Second Appeal.

(2)

3. Learned Counsel appearing on behalf of the applicant/appellant is absent on second call. Even on last occasion i.e. 12th June, 2017 the learned Counsel for applicant/appellant remained absent and the matter was adjourned to 19th June, 2017. On 19th June, 2017 the matter was adjourned at the behest of the applicant.

4. In view of above, this Court proceeds to decide the application and the appeal on merits.

5. For the reasons disclosed in the application, delay of 88 days caused in preferring Second Appeal stands condoned and the Civil Application stands allowed accordingly.

6. The present appellants are the original defendants in Regular Civil Suit No.9 of 1994. The respondents – original plaintiffs claimed declaration of ownership and perpetual injunction in regard to land Block No.129, to the extent of 8 Acres and 15 Gunthas, situated at Pimparkhed, Tq. Paranda, Dist. Osmanabad with standing trees and 1/3rd share in the well.

7. The said property was purchased by original plaintiffs i.e. respondents herein vide registered sale deeds dated 27th June, 1978 and 28th April, 1986. Based on the said title, the suit in question was brought in action.

(3)

8. The claim as put-forth by the respondents-plaintiffs was denied by the appellant-defendant, as according to him, the suit was false. It is further claimed that the measurement in sale deeds is not binding on him.

9. Learned Trial Court framed issues, particularly about the title of the plaintiffs, their possession over the suit property, share in the well and decreed the suit by judgment and order dated 21st December, 2005, which was confirmed in appeal being Regular Civil Suit No.29 of 2006, decided by learned District Judge-1, Osmanabad on 11th March, 2010. Thus, the present Second Appeal.

10. Since the learned Counsel for the appellant-defendant is absent despite repeated chances given to him, I have heard the learned Counsel appearing on behalf of respondents no.1 & 2.

11. I have also perused the grounds raised in the present appeal.

12. It is required to be noted that the suit of the respondents-plaintiffs was based on the title accrued to them vide registered sale deeds dated 27th June, 1978 and 28th April, 1986. Apart from above, before instituting the suit in question, the Cadestral Surveyor has measured the land based on the boundaries mentioned in the sale deeds at Exhs.83 and 90. The Sub-Divisional Officer, in his order at Exh.69, has given 1/3rd share in the way to the present respondents-plaintiffs.

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13. Rather, the appellant-defendant no.1 has not challenged the possession of the original plaintiffs over the suit land as could be apparent from the evidence of P.Ws. 1 and 2.

14. It is then to be noted that the suit land being Inam land, the concerned Collector on 26th June, 1978 granted permission to execute the sale deed which is at Exh.19. The original plaintiffs have established their title by examining P.W.1 and attesting witnesses P.Ws.4 and 5. The measurement carried out by P.W.3 pursuant to the provisions of Sub-section 2 of Section 2 of the Maharashtra Land Revenue Code and map drawn by Court Commissioner Exhs.76 and 152 describe possession of the plaintiffs over the suit land which was formed to be one of the basis for determining possession of the plaintiffs over the suit land. Though the plaintiffs' witness deposed that defendant – present applicant raised objection to mutate the name of the plaintiffs, however, the matter was compromised before the Deputy Collector. The land was got measured by fixing boundary marks which is further confirmed in the testimony of P.W.3 Cadestral Surveyor and also the order of Tahsildar about measurement of suit land which was carried out after notice to the defendant. All these aspects are appreciated by learned District Judge-1, Osmanabad in detail while determining four points which fell for his consideration. The first appellate Court re-appreciated the entire evidence and upon appreciation of sale deed, evidence of P.W.1 and other witnesses P.W.2 and P.W.3 and other documentary evidence confirmed the findings recorded by the Trial Court.

(5)

15. In the aforesaid backdrop, against the concurrent findings recorded by both the Courts below, I hardly see any substance in the grounds raised in the appeal, which are only based on the factual matrix.

16. In view thereof, in my opinion, the appeal lacks merit and stands dismissed.

(N.W. SAMBRE, J.)

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