

(1)

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

**CIVIL APPLICATION NO.109 OF 2016
WITH
CIVIL APPLICATION NO. 110 OF 2016
IN/WITH
SECOND APPEAL (ST) NO.38048 OF 2015**

Smt. Vijaya w/o Amrutrao Borse,
Age: 56 years, Occ: Household,
R/o. Shahapur, Tq. Jamner,
Dist. Jalgaon,
Through G.P.A. Holder
Shri. Amrutrao s/o Pandurang Borse,
Age: 62 years, Occ: Agri.,
R/o. Shahapur, Tq. Jamner,
Dist. Jalgaon. ..APPLICANT/APPELLANT

VERSUS

Shri Prakash s/o Sukhdeo
Borse, Age: 53 years,
Occ: Shahapur, Tq. Jamner,
Dist. Jalgaon. ..RESPONDENT

Mr Rahul A. Tambe, Advocate for
applicant/appellant;
Mr R.B. Dhakane, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 16th JUNE, 2017

ORAL ORDER :

Civil Application No. 109 of 2016 is for
condonation of delay caused in preferring second
appeal.

(2)

2. Civil Application No. 110 of 2016 is under Order 41 Rule 27 of the Code of Civil Procedure seeking permission to produce on record sale deed dated 2nd July, 1975 and other consequential documents on record.

3. Regular Civil Suit No. 82 of 2004 filed by present appellant-plaintiff against respondent-defendant for permanent injunction, which came to be dismissed by order dated 16th October, 2006, which was further confirmed in Civil Appeal No.20 of 2007 by the judgment and order dated 8th July, 2014.

4. Amongst other, reasoning as was recorded by the Courts below is, present appellant has failed to establish the title to the suit property.

5. In the aforesaid background, while drawing support from paragraph-1 of the plaint so as to demonstrate foundation in battle to the suit

(3)

property, the appellant-plaintiff has moved application for production of sale deed dated 2nd July, 1975 under order 41 Rule 27 of the Code of Civil Procedure.

6. After having heard respective Counsel for some time, respondent-defendant is in agreement that the delay caused in preferring the present appeal be condoned and also request for production of documents pursuant to the provisions of Order 41 Rule 27 of the Code of Civil Procedure as prayed in Civil Application No. 110 of 2016 be allowed. Respondent-defendant further consent for quashing and setting aside both the judgments referred supra passed by the trial Court and appellate Court dismissing the suit of the plaintiff. However, he urged that same be subject to payment of costs.

7. Consent as is extended appears to be reasonable one. Mr. Tambe, learned Counsel for the appellant-original plaintiff, upon instructions, submits that he shall deposit costs of Rs.25,000/-

(4)

(Rs. Twenty five thousand only) before this Court.

8. Amount of cost of Rs.25,000/- is agreed to be deposited in this Court within a period of two weeks, which is accepted in the form of undertaking.

9. If such amount of costs is deposited, original defendant will be entitled to withdraw the same.

10. In view of above, delay stands condoned. Civil Application No. 109 of 2016 is allowed.

11. As a consequences of above, the documents which are sought to be placed on record pursuant to Civil Application No. 110 of 2016 is allowed in terms of prayer clause (B) therein.

12. The said documents shall form part and parcel of the original proceedings and appellant will be at liberty to produce the original/certified copies of those documents before learned trial Court while recording evidence.

(5)

13. In the aforesaid background, judgment of the District Judge, Jalgaon in Civil Appeal No. 20 of 2007 on 8th July, 2014 and judgment delivered by learned Civil Judge, Junior Division, Jamner in Regular Civil Suit No.82 of 2004 on 16th October, 2006 by consent are quashed and set aside.

14. Regular Civil Suit No. 82 of 2004 stands restored to the file of learned Civil Judge, Junior Division, Jamner. Parties to the present appeal agree that no fresh notice be issued by the said Court as they shall volunteers to appear before the same Court on 3rd July, 2017. Learned Court below shall give fresh opportunity to the plaintiff to lead evidence in view of sale deed and other consequential documents and defendant-respondent shall get every opportunity to defend the case.

15. The trial Court should endeavour to decide the suit as both the parties agreed to extend co-operation for expeditious disposal within period of six months from the date of first appearance.

(6)

16. With above observations, the appeal stands disposed of.

(N.W. SAMBRE, J.)

Tupe