

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 9170 OF 2016

Madhukar Mahadu Sawant

...Petitioner

Versus

Shri. Bhaga Krushna Jagtap

...Respondent

....

Mr.Rupesh R. Lanjekar, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 02nd FEBRUARY, 2017

P.C.

1. Heard Mr.Rupesh Lanjekar, learned Counsel for the petitioner, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff' has challenged the judgment and order dated 3.10.2009 passed by the learned Civil Judge, Junior Division, Ulhasnagar in Misc. Application No.9/2009. By that order, the learned trial Judge rejected the application made by the plaintiff for condonation of delay of 4828 days in filing the application for restoration of R.C.S. No.147/1990 which was dismissed in default on 25.9.1995.

3. In support of this Petition, Mr. Lanjekar submitted that the plaintiff has given explanation for filing the restoration application and for condonation of delay of 13 years. He has invited my attention to the correspondence annexed at Exhibit-E collectively. He has also invited my attention to paragraph-VII of the Petition. He submitted that since 2009, the plaintiff was making the applications/raising objections before the concerned authorities for not transferring the suit land in the name of the defendant as the alleged agreement is false and fabricated document. He submitted that the forensic examiner has submitted report dated 28.1.2013 after scientifically examining the disputed thumb print (marked D). In short, Mr. Lanjekar submitted that the sale deed dated 21.8.1986 purportedly executed in favour of the defendant is false and fabricated document. It does not bear the signature or thumb impression of the plaintiff. He submitted that the valuable rights of the plaintiff will be defeated if the suit is not restored.

4. I have considered the submissions advanced by Mr. Lanjekar. I have also perused the material on record. As noted earlier, the plaintiff has instituted the suit for cancellation of the

sale dated 21.8.1986 executed in favour of the defendant. The suit was dismissed in default on 25.9.1995. The plaintiff filed application on 17.1.2008 for condonation of delay in filing restoration application. In support of this application, the plaintiff did not lead any evidence as also did not file documents to substantiate his case. In paragraph-7 the learned trial Judge noted that in support of the plaintiff's case for condonation of delay, no evidence is adduced either oral or documentary to justify absence of 13 long years. Though the plaintiff claimed that he was hospitalized on 20.9.1995 and was indoor patient on the date of hearing i.e. 25.9.1995. He was in hospital till 2.10.1995. He has however not produced any evidence to substantiate this plea. The certificate produced from 'Ashwini Hospital' falsifies the case of the plaintiff wherein the certificate was merely showing as out-door patient and refers the plaintiff unfit for duties only for 13 days and not 13 long years.

5. Apart from these reasons given by the learned trial Judge in dismissing the application for restoration, the petition is instituted on 2.7.2016 challenging the order passed on 3.10.2009. Perusal of the petition also shows that no explanation worth the name is given as to why the plaintiff

could not file petition within reasonable time after passing of the impugned. This shows that the plaintiff was totally indolent not only prosecuting the suit but even filing this Petition. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)