

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Application [CAS] No. 788 of 2016
IN
Second Appeal St. No.14430 of 2016
[Pramila Arjunrao Badhe & others Vs. Gajanan Gulabrao @ Gujabrao Badhe]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. P.S. Kadam, Adv., for the applicants.
Mr. N.B. Kalwaghe, Adv., for non-applicant sole.

- - - -

CORAM : A. S. CHANDURKAR, J.

DATE : 09th June, 2017

Prayer is to condone delay in filing the Second Appeal. The reasons for the delay are mentioned in paragraph 2 of the application.

The prayer is opposed by the learned counsel appearing for the non-applicant. It is submitted that applicants have been negligent in prosecuting the proceedings and hence the delay does not deserve to be condoned.

Having perused the reasons mentioned in paragraphs 2 and 3 of the application, I am satisfied that the delay as caused is not deliberate. The reasons mentioned appear to be probable. Hence, delay in filing the Second Appeal stands condoned.

Civil Application is allowed and disposed of.

-0-0-0-0-

Second Appeal St. No. 14430/2016 :

The appellants who are the original defendants are aggrieved by the decree for possession passed by the trial Court, as confirmed by the appellate Court.

One Gulabrao had three sons - Gajanan - the plaintiff, Arjunrao, the predecessor of the appellants, and one Shriniwas. It is the case of the plaintiff that he received Survey No. 86, admeasuring 0.81 Are in partition. As he was serving at Buldana, the suit field was being cultivated by his brother - Arjunrao. After the death of Arjunrao, the appellants herein were cultivating the suit field. According to the plaintiff, supervision of the agricultural field was being looked after by one Kishor Thakre. In the year 2006, the plaintiff filed suit for a declaration that he was the owner of the same. The defendants filed a counter-claim seeking permanent injunction. During pendency of the suit, the plaint was amended on the count that on 25th April, 2010, forcible possession of the suit property was taken by the defendants.

The trial Court on consideration of the evidence on record held that it was an admitted position that the

suit property was received in partition by the plaintiff. The stand of the defendants that they were tenants of the suit property was not believed and the application for referring the question to the tenancy Court was also rejected. The trial Court, therefore, decreed the suit and dismissed the counter-claim. The appellate Court by the impugned judgment has dismissed the appeal preferred by the original defendants.

Shri Kadam, learned counsel for the appellants, submitted that the appellate Court erred in framing only one point for determination as to whether it was necessary to remand the appeal for fresh consideration. He submitted that under provisions of Order-XLI, Rule 31, Civil Procedure Code, all relevant points falling for determination ought to have been framed. In that regard, he referred to the judgment of the Division Bench in **Khatunbi Mohammad Sayeed & others Vs. Aminabai Mohammad Sabir** [2006 (6) Mh.L.J. 759]. He then submitted that the plea of tenancy as raised had not been duly considered by both the Courts, thereby causing prejudice to the case of the appellants. He submitted that the appellants were cultivating the suit field as tenants thereof and, therefore, said issue ought to have been referred to the tenancy Court.

Shri Kalwaghe, learned counsel for the respondent, supported the impugned judgment. He submitted that even though a single point had been

framed, the appellate Court considered the entire material on record and then confirmed the judgment of the trial Court. He relied upon the judgment of the Honourable Supreme Court in **G. Amalorpavam & others Vs. R.C. Diocese of Madurai & others** [2006 (4) Mh. L.J. 187] to urge that there was substantial compliance with the provisions of Order-XLI, Rule 31 of the Code. He then submitted that the plaintiff was the owner of the suit property having received the same in partition. The forcible dispossession of the person who was looking after the agricultural field in the year 2010 was also proved. In absence of any document showing creation of tenancy, both the Courts rightly disbelieved the case of the appellants.

Having heard the learned counsel for the parties at length, I do not find that the Second Appeal gives rise to any substantial question of law. Though the appellate Court framed only one point with regard to the necessity to remand the matter, perusal of the entire judgment indicates consideration of all relevant material which found favour with the trial Court while decreeing the suit. In the light of the judgment of the Honourable Supreme Court in *G. Amalorpavan & others* [supra], there is substantial compliance with the provisions of Order-XLI, Rule 31 of the Code.

In so far as the aspect of tenancy is concerned, the trial Court on 14th October, 2013 refused to refer the

issue of tenancy to the revenue authorities. This order was not further challenged. The documents at Exhs. 92 and 93 that were sought to be relied by the defendants were not put to the plaintiff and, therefore, both the Courts did not attach much importance to the same.

In the light of the findings recorded which are findings of fact, there is no case made out to interfere in the Second Appeal. The same is accordingly dismissed. No costs.

Judge

||hedau||