

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Civil Application (CAS) No.1024 of 2015
In
Second Appeal Stamp No.22982 of 2015
(Munnilal Rama Shende and others v. Keshao Dhullu Sakhare)

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

Shri N.A. Vyawahare, Advocate for Applicants/Appellants.

Coram : R.K. Deshpande, J.

Date : 17th February, 2017

Civil Application (CAS) No.1024 of 2015 is filed by the original defendants for condonation of 2 years, 10 months and 30 days' delay caused in filing the second appeal.

Shri Vyawahare, the learned counsel for the appellants, was asked to argue the matter on merits. Accordingly, he is heard on the merits of the matter.

The Trial Court dismissed the suit for possession on the basis of title. The lower Appellate Court has reversed the judgment passed by the Trial Court and a decree is passed for delivery of possession of the suit property in favour of the plaintiff by the defendants. The plaintiff is held to be the allottee of the land from the State Government on the basis of the order dated 6-12-1972, Gat N.757. Hence, the original defendants are before this Court in this second appeal.

It was a specific defence raised by the appellants/defendants about ownership of the suit property on the basis of the registered sale-deed dated 9-7-1997 executed by the plaintiff in their favour. In support of the claim for title, the certified copy of Index-II register was filed before the Trial Court. The Trial Court, acting on the basis of this certified copy, dismissed the claim of the plaintiff. The lower Appellate Court considers this aspect of the matter in para 10 of its judgment, which is reproduced below :

“10. It is submitted by the learned counsel for respondents that Exh.44 extract from Index-II is sufficient to prove their title. In my opinion, the transaction of sale can be proved only by production of original registered sale-deed and proof of its due execution. The entries in the Index-II register cannot take place of the original sale-deed and this cannot exempt the proof of the original transaction of sale. On the basis of entry in Index-II register, inference cannot be drawn that it was duly executed by a particular person. I have already mentioned that in present case perusal of the sale-deed was essential in order to decide the rights of both parties on the basis of the contents in the sale deed.”

Obviously, the possession of the defendants was on the

basis of this registered sale-deed, which the defendants have failed to produced on record. The lower Appellate Court has held that the entries in the Index-II register cannot take place of the original sale-deed and this cannot exempt the proof of the original transaction of sale.

Thus, no substantial question of law arises for consideration of this Court. The second appeal is dismissed. Consequently, the civil application for condonation of delay does not survive.

Judge.

Lanjewar