

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application No.157 of 2015

In

Second Appeal Stamp No.24666 of 2014

(Nandlal s/o Ratanlal Jaiswal and others v. Champalal s/o Ratanlal Jaiswal
and another)

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

Shri V.S. Giramkar, Advocate for Applicants/Appellants.
Shri A.M. Deshpande, Advocate for Respondent No.1.

Coram : R.K. Deshpande, J.

Date : 14th February, 2017

The lower Appellate Court has passed a decree for partition and separate possession of 1/7th share of the plaintiff in the suit property. The dismissal of suit by the Trial Court has been set aside. The property is held to be the ancestral property. The defence of previous partition and execution of Will raised by the defendants is rejected.

The impugned judgment and order was passed by the lower Appellate Court on 5-3-2014. This application seeks condonation of 192 days' delay caused in filing second appeal. The application as well as the appeal both are preferred by seven appellants. The application is duly affirmed by the appellant No.2-Jaglal s/o Ratanlal Jaiswal. In para 6 of the application, it is

stated that from 7-8-2014 to 12-8-2014, the appellant No.2 was admitted in the hospital and the doctors had strictly advised him to take complete bed rest. This averment is denied by the respondent No.1, and it is the specific stand taken that on 8-8-2014, the appellant No.2 was present before the learned Judicial Magistrate First Class, Nandgaon-Khandeshwar in Regular Criminal Case No.31 of 2007 and the certified copy of the roznama is placed on record. It is, therefore, unbelievable that the appellant No.2 was admitted in the hospital on 8-8-2014 or even during the period from 7-8-2014 to 12-8-2014 as per the medical certificate issued by the private hospital. Be that as it may, nothing prevented the other six appellants to file the appeal, and there is no explanation furnished in respect of it.

In the decision of the Apex Court in the case of *Pundlik Jalam Patil (Dead) By LRs. v. Executive Engineer, Jalgaon, Medium Project and another*, reported in (2008) 17 SCC 448, it is held in para 12 as under :

“12. ... In our considered opinion, incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the application without any further inquiry as to whether the averments made in the application reveal sufficient cause to condone the delay. That a party taking a false stand to get rid of the bar of

limitation should not be encouraged to get any premium on the falsehood on its part by condoning delay. [See Binod Bihari Singh v. Union of India, (1993) 1 SCC 572].”

In view of the aforesaid position, the application lacs all *bona fides*. The statement made in application to seek condonation of delay is found to be false.

Hence, the civil application is dismissed. Consequently, the second appeal does not survive.

Judge.

Lanjewar