

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

***SECOND APPEAL NO. 831 OF 2015
Along with
CIVIL APPLICATION NO. 1761 OF 2015
(For stay)***

Ms.Indumati @ Indubai Macchindra Garad .. Appellant
Vs
Krishnat Macchindra Garad and others .. Respondents

Mr.Ashok Tajane, for the Appellant.

***Coram : N.M.Jamdar, J.
Date : 15 January 2018.***

Oral Order :

By this Second appeal, the Appellant has challenged the Judgment and Order passed by the learned District Judge in Civil Miscellaneous Application No.149 of 2011 refusing to condone the delay of nine years in challenging the Judgment and Decree dated 2 November 2002 passed by the learned Civil Judge, Junior Division Solapur in Regular Civil Suit No.212 of 2001.

2. Civil suit was filed by the Respondent Plaintiff seeking partition of the suit property i.e. Gat No.802 of village Nannaj. The

suit was decreed on 2 November 2002. It was held that the parties had 1/4th share in the suit property. The Appellant was not a party to the suit.

3. The Appellant filed an application for condonation of delay, on 6 June 2011. According to the Appellant she had absolutely no knowledge of the suit and she was not made party even though she had a share in the property. This application was resisted by the Respondent contending that the Appellant has no right or interest in the property and she is not the wife of the deceased - Opponent No.2. The learned District Judge considering the fact that the Appellant failed to produce any document as regards the right to property and that the Appellant had knowledge, refused to condone delay of nine years.

4. The delay of nine years on the face of it is inordinate. The dispute is a family dispute and generally the family members would be aware of the litigation. The learned counsel for the Appellant submitted that the learned District Judge was in error in considering the merits of the Appeal while deciding the application for condonation of delay. In the facts of the present case, when the Appellant was justifying the delay of nine years on the ground that her right was wrongfully being deprived and therefore, she was not being aware, was not in error in ascertaining whether the Appellant had any right in the suit property, before considering the application.

The dispute amongst the family members was settled by Civil Court, Solapur in the year 2002. It was sought to be re-opened after nine years. The learned District Judge could not have casually reopened the proceedings without even ascertaining whether there exists any prima facie right in favour of the Appellant.

5. Even otherwise the reason that the Opponent was not aware of the decree at all was rightly disbelieved by the learned District Judge. One Chitrakala i.e. daughter in-law of the Applicant filed an appeal in the year 2007 challenging the same Judgment and Decree and her application for condonation of delay which was rejected. There is nothing on record to show that the relations between the Appellant and Chitrakala were strained. There had to be cogent explanation from the Appellant as to how even Chitrakala did not inform the fact of the decree to the Appellant even though their relations were not strained. It was contended by the Respondent that the Appellant was staying with Chitrakala since many years at Pune and she had appointed Chitrakala as Power of Attorney. Considering these facts learned Judge was right in dismissing the application by the impugned order.

6. The learned counsel for the Appellant submitted that the rights of the Appellant would be affected, if the impugned order is sustained. If the Appellant failed to produce cogent explanation, that would be the consequences. Apart from the subject matter of the

present proceedings, if the Appellant has any other right, it is always open to the Appellant to agitate the same in Court of law. No substantial question of law arises. Second Appeal is accordingly dismissed. Civil Application stands disposed of.

(N.M.Jamdar, J.)