

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CAS No.668 of 2017 in Second Appeal St.No.12150 of 2017
(Khurshid Irfan w/o S. Irfanuddin .vs. S.G. Jilani (Since deceased) through
L.Rs. and others.)

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

Court's or Judge's orders.

Mr. C.S. Dharmadhikari, Advocate for Appellant.
 Mr. M.N. Agnihotri, Advocate for Respondent Nos. 1-E to 1F
 Mr. M.P. Khajanchi, Advocate for Respondent Nos. 1-C & 2B.
 Mr. Adil J. Mirza, Advocate for Respondent Nos. 3 to 12.

CORAM : Manish Pitale, J.
DATED : April 17, 2018.

This is an application for condonation of delay of 46 days in filing the accompanying appeal. The contesting respondents have been served while the names of proforma respondents, as per earlier order of this Court have been struck off due to failure on the part of the applicant/appellant to serve them. Since the contesting respondents are represented through counsel, they are heard on this application. For the reasons stated in the application, the same is allowed and delay is condoned.

Second Appeal St.No.12150/2018.

1. By this appeal, the appellant (original plaintiff) challenged judgment and order dated 13.01.2017 passed by the Court of District Judge, Nagpur (appellate Court) dismissing Regular Civil Appeal No. 636 of 2007 , thereby confirming the judgment and

order dated 30.08.2007 passed by the Court of Joint Civil Judge, Junior Division, Nagpur (trial Court) in Regular Civil Suit No. 1151 of 1991. Both the Courts below have concurrently held against the appellant.

2. The appellant had filed a suit for partition and separate possession in respect of suit property being House No. 701 (Old No. 820), Ward No.31, Namak Ganj Taka, Itwari, Nagpur. It was claimed by the appellant that one Kaniz Begum was the original owner of the suit property. She was the sister of the appellant's father. The defendants in the suit were the uncles of the appellant (original plaintiff). It was the case of the appellant that the said Kaniz Begum had died issue-less and that her brothers i.e. father of the appellant and the defendants i.e. uncles of the appellant had inherited the property belonging to the said Kaniz Begum. On this basis, the appellant had filed the suit seeking the aforesaid reliefs.

3. The defendant no.1 in the original suit i.e. uncle of the appellant took a stand that he was owner of the suit property by virtue of a gift deed executed in his favour. In the alternative it was claimed that he was owner by adverse possession.

4. The trial Court dismissed the suit, inter alia, holding that the appellant had failed to prove that the said Kaniz Begum was owner of the suit property. The trial Court also negatived the claims made on behalf of the original defendant no.1. As the basic fact about

ownership of the suit property in Kaniz Begum was not proved by the appellant, the share claimed by the appellant was not granted and suit was dismissed.

5. Aggrieved by the same, the appellant filed Regular Civil Appeal No.636 of 2007 before the appellate Court. By the impugned judgment and order, the appeal has been dismissed and the judgment and order of the trial Court has been confirmed. The appellate Court as the final Court on facts, has found that the appellant had failed to discharge the burden to prove that the said Kaniz Begum was having ownership and tile in the suit property.

6. Aggrieved by the impugned judgment and order, the instant appeal has been filed. It is contended on behalf of the appellant that when the stand taken by the original defendant no.1 about being owner of the suit property on the basis of a gift deed and alternatively on the basis of adverse possession, had been rejected and relationship of the parties was admitted, the appellant certainly had a share in the property and that to the extent of her share, she was entitled to relief. A perusal of the concurrent orders passed by the Courts below shows that the basic fact regarding ownership of the suit property being that of Kaniz Begum could not be proved by the appellant. It was only upon proof of such fact that the relief of partition and separate possession claimed by the appellant could have been considered. The finding of fact rendered by the two Courts below concurrently

holding that Kaniz Begum could not be held to be owner of the suit property, has not been demonstrated to be perverse or that it is based on erroneous appreciation of the evidence and material on record. In the absence of proof of the very basis on which claim was made by the appellant, it cannot be said that the appellant could successfully claim share in the suit property.

7. Hence the present appeal does not give rise to any substantial question of law requiring exercise of jurisdiction under Section 100 of the Civil Procedure Code, 1908. Accordingly, this appeal is dismissed with no order as to costs.

JUDGE

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