

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 12th July, 2018**

+ **RSA 83/2018**

VISHAL SHARMA & ORS

..... Appellants

Through: Mr. Pradeep Kumar, Adv.

Versus

MUNICIPAL CORPORATION OF DELHI

& ORS

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CMs No.21715/2018 & 21717/2018 (both for exemption)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

RSA 83/2018 & CMs No.21714/2018 (for stay) & 21716/2018 & 21718/2018 (for condonation of delays of 406 in filing and 37 days in re-filing the appeal respectively)

3. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 impugns the judgment and decree [dated 23rd November, 2016 in RCA No.84/16/10 (Unique Case ID No.02402C0178082010) of the Court of Additional District Judge (ADJ)-01 (East), Karkardooma Courts, Delhi] of dismissal of first appeal under Section 96 of the CPC filed by the predecessor of the six appellants, and in which appeal the six appellants were substituted on demise of their predecessor, against the judgment and decree [dated 17th April, 2010 in Original Suit No.177/1993, New Suit No.430/2002 of the Court of Additional Senior Civil Judge (East), Karkardooma Courts, Delhi] of dismissal of the suit for declaration, possession, damages and *mesne* profits filed by the predecessor of the appellants.

4. The appeal is accompanied with CM No.21716/2018 for condonation of 406 days delay in filing thereof and with CM No.21718/2018 for condonation of 37 days delay in re-filing thereof.

5. The reasons stated for the delay in filing the appeal are that (i) on the demise of the predecessor of the appellants on 4th November, 2013, the appellants were substituted in his place in the First Appellate Court; (ii) the appellant No.1 Vishal Sharma is the only male member in his family, with the appellant No.2 Smt. Indermani Sharma being a senior citizen and appellant No.3 Smt. Zinu Sharma being a female and unable to pursue the present appeal and the appellants No.4 to 6 namely Smt. Dimple Sharma, Smt. Mona Sharma and Smt. Sonu Sharma being married; (iii) the appellant No.1 could not appear regularly during the pendency of the First Appeal owing to ailments and was dependent upon the counsel engaged by the appellants; (iv) however the said counsel, despite asking several times, did not apprise the appellants about the status of the appeal; (v) the said counsel, only on 28th June, 2017 informed that the appeal had been dismissed but did not disclose the date of the dismissal; (vi) that prior to the demise of the predecessor of the appellants, the said predecessor only was conducting the case and the appellants were innocent about the procedure of the Court; (vii) the counsel who has filed the present appeal was engaged “in the month of July” and inspected the file on “26/08/2017” and applied for certified copies; (viii) it was learnt that “labour court has been shifted to Dwarka Court due to which certified copy could not be received”; (ix) finally on “20th January, 2016” the certified copies were received; (x) since the appellant No.1 is suffering from some ailment, he could not file the

Second Appeal within time and hence the application for condonation of delay of 406 days; (xi) 148 days taken in obtaining certified copies is to be excluded; and, (xii) total delay is of 431 days.

6. The averments in the application for condonation of delay are undecipherable and inconsistent. While on the one hand, it is stated that the counsel before the First Appellate Court informed of dismissal of appeal on 28th June, 2017, on the other hand, it is stated that the certified copies were received on 20th January, 2016. It is not clear as to condonation of how many days delay is sought and on what basis it has been computed. While in para 14 of the application for condonation of delay, it is stated that the delay is of 431 days, in the prayer paragraph, it is stated that the delay is of 406 days. It appears that the appellant and his counsel have signed the application and sworn the affidavit in support thereof, without even reading the same. It is also not understandable as to why reference to Labour Court is being made.

7. A perusal of the certified copy of the judgment of the First Appellate Court shows endorsement thereon of the same having been applied on 1st December, 2017 and having been collected on 20th January, 2018. This appeal was filed first on 12th March, 2018 but apparently with defects and thereafter repeatedly refiled and has come before this Court today for the first time.

8. The aforesaid dates do not match with what is pleaded in the application for condonation of delay.

9. Even if the knowledge of dismissal on 23rd November, 2016 of the First Appeal was gained first on 28th June, 2017, there is no reason

pleaded for applying for certified copy only on 1st December, 2017. It is quite evident that the factual statements in the application for condonation of delay are false and have been affirmed without any regard to truth.

10. The aforesaid does not entitle the appellants to condonation of delay.

11. Even on merits, the averments in the application for condonation of delay are vague. It is not pleaded as to who was the Advocate in the First Appellate Court, when were the enquiries made from him, why it is the appellant No.1 only who could have conducted the case and not the other appellants who will also have a share in the property with respect to which suit from which this appeal is filed. In today's date and time, condonation of delay cannot be claimed merely by pleading gender or marriage. The married sisters of the appellant no.1 i.e. appellants no.4 to 6, merely by marriage, cannot be said to have disabled themselves from pursuing their interest; they have not abandoned or relinquished their share in the property. Rather, by their marriage, their husbands have also become members of family and will also be beneficiary of the property subject matter of appeal and could have acted. The appellant no.3, being unmarried sister of appellant no.1, similarly could have acted. No particulars have been given of the vocation of the appellants. It cannot be ascertained, whether the appellants, while going about their respective vocations normally were lethargic only in preferring the appeal.

12. It has become common that one lawyer blames the previous, without even eliciting from the counsel who is blamed, whether the

litigants acted negligently. The counsel for the appellants today also is unable to tell even the name of the previous counsel to whom negligence and breach of ethics and conduct is attributed. No credence can be given to such averments.

13. Though it is stated that the appellant No.1 was ill, but no particulars of his ailment have been given. The photocopies of the medical certificates purported to be filed to show such ailments, do not inspire confidence. The said certificate also are of 1st December, 2016 of the ailment of an enlarged liver.

14. The counsel for the appellants is unable to tell the vocation of the appellant No.1 i.e. whether he is an employee or carrying on his own business and is also unable to tell whether the appellant No.1 was on leave or had shut down his business for over two years.

15. Thus, even if the averments in the application for condonation of delay were to be given any meaning, no ground for condonation is made out.

16. Thus, the applications for condonation of delay are liable to be dismissed.

17. Though the appeal is liable to be dismissed as barred by time but to satisfy the judicial conscience, I have also gone through the entire Trial Court record filed along with the memorandum of appeal and have also given an opportunity to the counsel for the appellants to make submissions on merits.

18. The predecessor of the appellants, on 7th August, 1993, filed the

suit from which this appeal arises, pleading (i) that he was the absolute owner of plot No.178 min Block-B, Southern Portion, measuring 422 sq. yds., in Khasra No.728/5 situated in Village Jhilmil Tahirpur, Delhi Shahdara; (ii) that he had occupied the said plot in April, 1978 and had started claiming himself to be in adverse and hostile possession to Smt. Rameshwari Chand Devi, owner of the said plot of land and everybody else; (iii) that he was in continuous possession of the said land till 4th March, 1993, when he was dispossessed therefrom by the respondent/defendant Municipal Corporation of Delhi (MCD) and its officials; (iv) that he had also constructed two rooms and boundary wall on the aforesaid plot of land; (v) that he had perfected his title to the aforesaid plot by remaining in adverse possession of the land for over 12 years; (vi) however, Rameshwari Chand Devi in September, 1987 had picked up quarrel with him and in order to avoid litigation, he had paid Rs.42,000/- to her towards purchase price of the land against registered receipt and she had also executed an Agreement to Sell and General Power of Attorney in his favour and the sale was completed; and, (vii) that the officials of the respondent/defendant MCD dispossessed him on his refusing to illegally gratify them. Thus, the reliefs of declaration of ownership to the property and of recovery of possession with *mesne* profits and damages on account of demolition were claimed.

19. The respondent/defendant MCD and its officials contested the suit by filing a written statement denying the averments in the plaint and *inter alia* pleading (a) that the subject land was owned by the erstwhile Municipal Committee, Delhi and on coming into force of the Delhi Municipal Corporation Act, 1957 vested in the respondent/defendant

MCD which was the owner thereof and in possession thereof; (b) that the predecessor of the appellants was never in possession of the said land; (c) that the predecessor of the appellants had tried to encroach upon the said land on 8th February, 1993 and which attempt was frustrated by the respondent/defendant MCD.

20. In the aforesaid state of pleadings, the following issues were framed in the suit on 6th February, 1996:

- “1. *Whether the plaintiff is the owner of the suit property as claimed in the plaint? OPP*
2. *Whether the plaintiff had raised any illegal construction and defendant had demolished the same to save encroachment? OPD*
3. *Whether the defendants have illegally dispossessed the plaintiff from his property in suit?*
4. *Whether there is any valid written statement filed on behalf of defendant No.1 to 5?*
5. *Whether the plaintiff is entitled to the possession, damages and use and occupation charges? If so, to what extent? OPP*
6. *Relief.”*

21. The Suit Court dismissed the suit, finding/reasoning (i) that though the predecessor of the appellants in the plaint claimed to have perfected his title by adverse possession in the year 1990 but had also claimed purchase of land from the previous owner thereof i.e. Rameshwari Chand Devi, in the year 1987 and thus no case of adverse possession was made out; (ii) that the predecessor of the appellants, in proof of his possession of land, had proved a rent agreement of letting of one of the rooms along with Ration Card of the tenant on the said address but only a photocopy of the Ration Card was filed and there was overwriting of the address

thereon; (iii) thus, it could not be said that the predecessor of the appellant had put anybody into possession of any part of the property as tenant; (iv) that the registered receipt of money executed by Rameshwari Chand Devi did not mention that the money received was by way of sale consideration of the property and in fact did not refer to the property; (v) that the Agreement to Sell and General Power of Attorney executed by Rameshwari Chand Devi did not confer title on the predecessor of the appellants; (vi) that there was no evidence to show that Rameshwari Chand Devi was the owner, to be able to convey any title in the property to the predecessor of the appellants; and, (vii) that there was no evidence to show that the predecessor of the appellants had raised any construction. Accordingly, the suit was dismissed.

22. The First Appellate Court has dismissed the appeal preferred by the appellants, affirming the findings of the Suit Court and in addition reasoning (a) that Rameshwari Chand Devi, claimed to be the earlier owner and from whom the predecessor of the appellants claimed title, had not been examined; (b) that receipt, General Power of Attorney and Agreement to Sell also had not been proved in accordance with law and only copies thereof were produced; (c) that while in the Agreement to Sell, the sale consideration was Rs.40,000/-, the registered receipt was for Rs.42,000/-; and, (d) that the respondent/defendant MCD had proved title documents in its favour with respect to the said land as DW1/1 and which were not challenged. Accordingly, the First Appeal was dismissed.

23. The counsel for the appellants, on being asked to address on the merits, has only drawn attention to page 82 of the paper book being the

copy of the General Power of Attorney claimed to have been executed by Rameshwari Chand Devi. However, on enquiry, as to how the same constitutes a document of title, the counsel has no reply.

24. No other arguments have been urged by the counsel for the appellants.

25. I may add that the plaint in the suit was in fact liable to be rejected and the suit ought not to have been put to trial. The predecessor of the appellants, in the suit, was claiming to be the owner by adverse possession as well as by lawful title to the property. It has been held in (i) *Annasaheb Bapusaheb Patil Vs. Balwan alias Balasaheb Bapusaheb Patil* (1995) 2 SCC 543; (ii) *Vidya Devi alias Vidya Vati Vs. Prem Prakash* (1995) 4 SCC 496; (iii) *Mohan Lal Vs. Mirza Abdul Gaffar* (1996) 1 SCC 639; (iv) *Karnataka Board of Wakf Vs. Government of India* (2004) 10 SCC 779; (v) *T. Anjanappa Vs. Somalingappa* (2006) 7 SCC 570; (vi) *P.T. Munichikkanna Reddy Vs. Revamma* (2007) 6 SCC 59; and, (vii) *Mandal Revenue Officer Vs. Goundla Venkaiah* (2010) 2 SCC 461 that the two are antithetical and cannot coexist. The predecessor of the appellants having sued for recovery of possession on the basis of title and a perusal of the plaint not disclosing any title to the property in the predecessor of the appellants, the plaint was liable to be rejected.

26. Only a semblance of proposing the substantial questions of law has been made in the memorandum of appeal but merely in the form of issues and which do not constitute questions of law let alone substantial questions of law.

27. Thus, no question for entertaining this Second Appeal is made out.

28. Thus, on merits also, no case for entertaining this Second Appeal is made out.

29. Dismissed.

RAJIV SAHAI ENDLAW, J.

JULY 12, 2018

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