

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 29 of 2019

1. Gopal Sahu S/o Late Dauram Sahu Aged About 65 Years R/o Village And Post Keshra, Tehsil Patan, District- Durg, Chhattisgarh.,
2. Dheerpal Sahu S/o Late Shri Dauram Sahu Aged About 52 Years R/o Village And Post Keshra, Tehsil Patan, District- Durg, Chhattisgarh.
3. Govind Ram Dewangan S/o Late Shri Aaskaran Dewangan Aged About 42 Years R/o Village And Post Khorpa, Tehsil Abhanpur, District- Raipur, Chhattisgarh.

(As The Appellant No.3 Is Bonafide Purchaser Of The Disputed Land Therefore During Pendency Of Civil Suit He Was Arrayed As Party), District : Raipur, Chhattisgarh

---- Appellants

Versus

1. Suresh Kumar S/o Shri Pannalal Sahu Aged About 34 Years R/o Village Keshra, Tehsil Patan, District- Durg, Chhattisgarh.
2. Umesh Kumar S/o Pannalal Sahu Aged About 32 Years R/o Village Keshra, Tehsil Patan, District- Durg, Chhattisgarh.
3. The State of Chhattisgarh Through Collector Durg, District- Durg, Chhattisgarh.

---- Respondents

For Applicant : Mr. Avinash Chand Sahu Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

ORAL ORDER

30-09-2019

1. Default over-ruled.

2. Heard on I.A.No.1 of 2018, which is an application for condonation of delay in filing the instant appeal which is supported by an affidavit of Govind Ram Dewangan.
3. This Miscellaneous Appeal is preferred under Order 43 Rule 1(u) of the Code of Civil Procedure 1908 against the judgment/decreed dated 3-7-2017 passed by 4th Additional District Judge, Durg, CG in Civil Appeal No. 259-A/2013 arising out of judgment dated 8-5-2013 passed by Civil Judge, Class-1, Patan, District Durg in Civil Suit No.59-A/2011.
4. This miscellaneous appeal is filed against the decree dated 3-7-2017 on 15-2-2019 i.e., after one year and seven months. It is submitted on behalf of the appellants that appellants No.1 and 2 are senior citizens and they rustic villagers, therefore, delay may be condoned.
5. From the judgment/decreed of the first appellate court it appears that the said court has remanded the case to trial court. The judgment and decree of the court below was passed on 3-7-2017 whereas the instant appeal was filed on 15-2-2019 i.e., after one year and seven months.
6. I have heard, learned counsel for the appellants.

7. The question for consideration of this Court is whether the appellants have shown sufficient cause for filing of the instant appeal. The test which is applied is whether the appellants honestly and sincerely intended to prosecute the appeal. Present appeal is filed after one and seven months. Filing of the appeal after lapse of time shows that the appellants have not acted diligently and remained inactive for a long. It can be said that the appellants have acted in negligent manner and there was want of bona fide on their part. It is not the case where appellants sincerely intended to contest the case and did their best to do so, therefore, it is the appellants who could be blamed for not filing the appeal in time. The appeal is filed after one year and seven months which is clearly after expiry of the period of limitation, in other words the application is hopelessly time barred.
8. This Court in the facts and circumstances of the case cannot ignore the period of limitation because no court shall have jurisdiction to entertain any application if the same has been filed after expiry of the period of the limitation. The application is evidently time barred and looking to the gross negligence of the appellants this Court has no reason to entertain the said appeal.

9. Accordingly, the instant appeal is liable to be and is hereby dismissed. Consequently, I.A. No. 1/2019, application for condonation of delay in filing the present appeal and I.A.No. 2 of 2019 application for grant of stay also stand dismissed.

Sd/-

(Ram Prasanna Sharma)

JUDGE

Raju