

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

CIVIL APPLICATION (CAS) NO.124 OF 2019
IN
SECOND APPEAL STAMP NO.16127 OF 2018

(Shri Ramesh s/o Anandrao Ghumade (dead) thr. LRs. Shakuntala wd/o Ramesh
Ghumade and others Vs. Bhaskar s/o Urkudaji Waghmare (dead) thr. LRs. Smt.
Manorama wd/o Bhaskar Waghmare and another)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri Amit R. Prasad, Advocate for Appellants.
Shri M.B. Turankar, Advocate for Respondent 1 (i) & (ii).

CORAM: ROHIT B. DEO, J.

DATE: 1st APRIL, 2019.

Heard.

2] This application is taken out for condonation of delay of 772 days in preferring the second appeal.

3] This Court is not satisfied that the delay is satisfactorily explained.

4] However, only in order to satisfy the conscious of the Court, this Court has looked into concurrent findings recorded in order to ascertain whether the applicant – appellant has an arguable case, and having done so this Court is satisfied that no question of law is involved in the second appeal.

5] The appellants are the legal heirs of the original defendant Ramesh.

6] The respondents are the legal heirs of the

original plaintiff Bhaskar.

7] Bhaskar instituted Regular Civil Suit 1062/2006 for possession of the suit property on the basis of sale-deed dated 24.01.1997 executed by the defendant Ramesh in favour of Bhaskar.

8] The suit is decreed by the courts below. A concurrent finding of fact is recorded that the sale-deed is duly proved.

9] Shri Amit Prasad, the learned counsel for the appellants would submit that the sale-deed is purportedly executed and registered on 24.01.1997. However, one of the stamp paper bears the date on 14.11.1997. It is apparent from a bare perusal of the stamp paper that there appears some overwriting.

10] This Court is not inclined to consider the submission. There is no dispute that the sale-deed is registered on 24.01.1997. No effort is made by the defendant to prove otherwise. Even if it is assumed that there is some error in the date on one of the stamp paper, since the registration of sale-deed of 24.01.1997 is irrefutable, it is difficult to accept the submission that the document is suspicious.

11] It is further pointed out by the learned counsel for the plaintiff that the defendant Ramesh instituted Special Civil Suit 1057/2007 questioning the validity of the sale-deed and that the said civil suit is dismissed on 13.11.2018. First Appeal 501/2012 is also dismissed on 29.01.2016. It is fairly stated by Shri Prasad that this finding

has assumed finality since no appeal is preferred under section 100 of the Code of Civil Procedure before this Court.

12] The application for condonation of delay is rejected, since sufficient cause is not shown and also because the appeal is *ex facie* without substance.

JUDGE

NSN