

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

CIVIL APPLICATION (CAS) NO.21 OF 2017
IN
SECOND APPEAL STAMP NO.19166 OF 2016

(Shri Mohammad Nazir s/o Sheikh Gulam Mansoori and another Vs. Smt.
Kaushalyabai d/o Parasram Jambhulkar 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 G.N. Khanzode, Advocate for Appellants.
Shri A.M. Ghare, Advocate for Respondent 2.

CORAM: ROHIT B. DEO, J.

DATE: 15th APRIL, 2019.

Heard.

2] This application is taken by the defendants seeking condonation of delay of more than 316 days in preferring appeal under section 100 of the Code of Civil Procedure.

3] This Court is not satisfied that the delay is properly explained. However, only in order to ascertain whether the defendants have an arguable case on merit, the reasons recorded by the courts below and the pleading are looked into.

4] The plaintiff brought the suit for ejectment and possession. The plaintiff claimed to be the owner of the suit property which is described as plot 9 admeasuring 4263

sq.ft. forming part and portion of the survey number 921 situated at Mouza Zingabai Takali, Chhindwara Road, Nagpur. The suit property is described with particularity in paragraph 8 of the plaint.

5] The plaintiff traced her title in paragraph 1 of the plaint and contended that the suit property was measured by the City Survey Department in the year 1984 and 1989 and the name of the plaintiff is duly mutated in the revenue record. The case of the plaintiff is that defendants 1 and 2 purchased some plots from defendant 3 society which are adjacent to the suit property and that the defendants 1 and 2 encroached upon the suit property by removing the temporary shed erected by the plaintiff. The written statement is of bare denial. The defendants 1 and 2 do not specifically deny the description of the suit property.

6] The evidence of the plaintiff has gone unchallenged. The defendants did not cross-examine the plaintiff nor did the defendants adduce evidence in rebuttal. The trial court declared the plaintiff the owner of the suit property. However, the trial court rejected the relief of possession on the ground that the plaintiff did not bring on record the details of encroachment. The defendant did not assail the judgment of the trial court. The plaintiff preferred first appeal to the extent she was denied relief of possession, which is allowed by the judgment and decree impugned.

7] I am satisfied that on merits the defendants do not have an arguable case, at any rate a case warranting interference under section 100 of the CPC. The entire evidence has gone unchallenged. In the written statement, other than bare denial of every material averment, the defendants have not disclosed the right or the source thereof on the basis of which they are entitled to any share in the suit property as described in the plaint. It has come on record that the defendants brought a suit for injunctive relief against the plaintiff which is dismissed. The Appellate Court re-appreciated the evidence on record and rightly held the plaintiff to be entitled to the relief of removal encroachment and possession.

8] In this view of the matter, I do not see any propriety in condoning the delay, for which even otherwise no case is made out. The application for condonation is rejected.

JUDGE