

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 CIVIL APPLICATION NO.1584 OF 2016
IN SAST/3035/2016 WITH CA/1585/2016

CHANDRAKANT SHANKARRAO DESHMUKH

VERSUS

RAMKRISHNA SHAMRAO JAMDADE AND OTHERS

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Mr. R.L. Kute, Advocate for the applicant

Mr. S.B. Choudhari, Advocate for the respondent No.1

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 11th AUGUST, 2021.

ORDER :

1 The application for condonation of delay has been filed to get delay of 587 days condoned in filing Second Appeal. Applicant is the original defendant No.4. He wants to challenge the concurrent Judgment and Decree. He has contended that his real brother was seriously ill from December, 2013. He was required to be hospitalized at Solapur. However, ultimately his brother expired on 21.11.2015. He was busy in taking care of his brother from December, 2013 to November, 2015 and, therefore, could not file the Second Appeal within limitation.

2 Heard learned Advocate Mr. R.L. Kute for the applicant and learned Advocate Mr. S.B. Choudhari for the respondent No.1.

3 The applicant has produced certain medical papers on record. Taking liberal view, though the respondent No.1 has strongly opposed the application by filing affidavit-in-reply of the respondent No.1, the delay deserves to be condoned. Accordingly, it is condoned.

4 With consent of both the parties the Second Appeal was taken up for admission, immediately. The learned Advocate appearing for the appellant-original defendant No.4 submitted that both the Courts below have not considered the defence that was taken by the appellant in proper perspective. The lower Appellate Court had failed to consider that Section 90 of the Indian Evidence Act is not applicable to unregistered document and wrongly believed that the said document is proved. In fact, present appellant-original defendant No.4 was contending that the suit property is part of the land, which is locally known as 'Gadhi'. However, plaintiff has got his name entered forcibly and the entries in the Grampanchayat record are not proof of title. Both the Courts below ought to have dismissed the suit.

5 Per contra, the learned Advocate appearing for respondent No.1 supported the reasons given by both the Courts below and submitted that

when the plaintiff has proved his title and possession, the suit was correctly decreed.

6 In order to prove their claim over the suit property the plaintiff has produced on record sale deed. It was in modi script and, therefore, it was got translated by the plaintiff and the Translator has been examined as PW 3 Kashinath. It is to be noted that the consideration that has been stated in that document is Rs.15/-. It was not compulsorily registrable document because the value of the same is below Rs.100/-. The document appears to have been correctly exhibited and the provisions of Section 90 of the Indian Evidence Act have been properly applied. When the sale deed itself has been produced on record by the person who had purchased the suit property, that is, the document is coming on record from proper custody, then presumption was bound to follow. Further, not only in respect of ownership but there are documents showing that the plaintiff has paid the necessary taxes to the Grampanchayat. Further, it can be seen that the defendant No.4 was coming up with the specific defence that he is the owner of the said property and it is part and parcel of Sy.No.1, which is known as 'Gadhi'. The learned Trial Judge as well as First Appellate Court both have considered that the present appellant has not produced any documentary evidence to support his contention. Under such circumstance, the view taken by both the Courts

below on the basis of assessment of oral as well as documentary evidence and the legal point therein involved is correct. No substantial question of law is arising, as contemplated under Section 100 of the Code of Civil Procedure, 1908. Hence, the Second Appeal stands dismissed. Civil Application No.1585 of 2016 stands disposed of.

(Smt. Vibha Kankanwadi, J.)

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