

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

32 CIVIL APPLICATION NO.9902 OF 2015
IN SAST/10793/2015

SADASHIV @ SHAHAJI KISANRAO TANTAK(KASAR)

VERSUS

ARUN DATTATRAYA FUTANE

...

Mr. S.S. Bora, Advocate for the applicant

Mr. N.V. Gaware, Advocate for the sole respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 02nd AUGUST, 2021.

PER COURT :

1 Present application has been filed for getting delay of 170 days in filing Second Appeal condoned.

2 Heard learned Advocate Mr. S.S. Bora for the applicant and learned Advocate Mr. N.V. Gaware for the sole respondent. In order to cut short it can be said that they have argued in support of their respective contentions.

3 It is to be noted that as per the applicant, he was confused about the operative part of the Judgment and Decree passed in the appeal. Though

his appeal was allowed and the Judgment and Decree was set aside, it was in fact, modified. Plaintiff as well as defendant were restrained by separate order of injunction, and therefore, he was confused as to whether he should file the appeal or not. The said reason appears to be reasonable, taking into consideration the fact that the present applicant was the original plaintiff, who had filed suit for perpetual injunction. The suit was decreed and the defendant, his agent and servant were restrained from obstructing the peaceful possession of the plaintiff over the suit land, till he was dispossessed by adopting proper procedure of law. The said decree was challenged by the original defendant before learned Principal District Judge, Ahmednagar, who as it appears in a cryptic Judgment allowed the appeal in part. The Judgment and Decree passed by the learned Trial Judge was set aside. Yet, the defendant was perpetually restrained from interfering with the possession of the plaintiff over the suit land, inclusive of demarcated portion shown in the map of measurement carried out by Taluka Inspector of Land Records, at the instance of defendant. Then it is also stated that the plaintiff is directed not to obstruct the possession of the defendant over land Gat No.1198 or to take into possession any further portion of the said land. It is then stated that the measurement map dated 29.08.2001 shall be part of the decree. Surprising part to be noted is that perusal of both the Judgments and Decrees would show that the said map was not treated by learned Trial Judge as

proved. Therefore, when the confusion of the applicant appears to have reasonable ground, the delay deserves to be condoned. Accordingly, the application stands allowed and disposed of. The delay stands condoned in filing the Second Appeal. Registry to verify and register the Second Appeal and place it for further consideration on 01.09.2021.

(Smt. Vibha Kankanwadi, J.)

agd