

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 CIVIL APPLICATION NO.6974 OF 2012
IN SAST/11989/2012

GODAVARI BALIRAM PAWAR
VERSUS
PUNJAJI MADHAV NAREWAD AND ANR

...
Advocate for Applicant : Mr. S. R. Bagal h/f Mr. Gadegaonkar Bharat N.
Advocate for Respondent No.1 : Mr. Badakh Vishal S.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 23.09.2021

ORDER :-

. Present civil application has been filed for getting the delay of 706 days condoned in filing second appeal. The applicant is the original plaintiff, who had filed Regular Civil Suit No.53 of 2007 before the learned Civil Judge Junior Division, Hadgaon, Dist. Nanded for declaration of ownership and perpetual injunction. The said suit came to be dismissed on 25.06.2009. The present appellant challenged the said judgment and decree by filing Regular Civil Appeal No.97 of 2009 before the District Court Nanded. The said appeal was heard by learned Principal District Judge, Nanded and was dismissed on 27.01.2010. The applicant intended to file second appeal, however, there is delay of 706 days. Hence, this application.

2. Heard learned Advocate Mr. S. R. Bagal holding for learned Advocate Mr. B. N. Gadegaonkar for the applicant and learned Advocate Mr. V. S. Badakh for respondent No.1

3. It has been vehemently submitted on behalf of the learned Advocate for the applicant that the applicant is a poor lady coming from a very small village. In fact, during the pendency of the appeal, injunction was granted in favour of the applicant and respondents were restrained from disturbing the peaceful possession of the plaintiff over the suit property. Her rights were protected, however, in January, 2012, respondents tried to take peaceful possession and thereby interfered with her possession. Therefore, she made inquiry with her lawyer at Nanded and then came to know about the dismissal of the appeal on 2010. According to her, till that date, she had no knowledge about the decision by the first Appellate Court. After the said knowledge, she collected the certified copies and with arrangement of funds for payment of Court fees as well as litigation expenses, she approached to this Court in February, 2012. According to the applicant, the delay is due to lack of knowledge and money and, therefore, he prayed for condonation of delay.

4. Learned Advocate for the respondent strongly opposed the application by submitting that no reasonable much less sufficient ground

has been shown to condone the delay of 706 days.

5. At the outset, it is to be noted that the duty of the appellant would not have ended when as per her contention that the interim injunction was granted during the pendency of appeal. She ought to have been in contact with her Advocate from time to time. Further, she is making allegation that her Advocate had not informed about the decision of the appeal to her. This has not been so stated in specific words, but then in other words, she has tried to state that she had no knowledge about the decision in the appeal. If she has not contacted her Advocate, then she will have to blame herself. Another fact which is not convincing is that though the appeal was decided on 27.01.2010, if respondents had the intention to disturb her possession, why they would have waited for two years to do so. She is attributing the knowledge about the decision of the appeal in January, 2012. Therefore, this date or period of knowledge as claimed is also not convincing. There is huge delay and one of the reason as aforesaid regarding knowledge is not convincing. The second reason is regarding collection of amount for the Court fees and the litigation expenses. It is to be noted that the suit was for declaration and injunction. The Court fee that is paid is Rs.220/-. For such amount, it cannot be said that she would have required so much of period. Reliance can be placed on the decision of this Court in ***Kamalbai***

w/o Narasaiyya Shrimal and another Vs. Ganpat Vithalrao Gavare, [2006 SCC OnLine Bom 1126], wherein it has been observed that :-

“Delay cannot be condoned only because it is unintentional. So also, mere poverty cannot be a ground for condonation of delay.

The expression “sufficient cause” cannot be erased from Section 5 of the Limitation Act by adopting excessive liberal approach which would defeat the very purpose of Section 5. There must be some cause which can be termed as a sufficient one for the purpose of delay condonation.”

6. Therefore, no reasonable ground has been shown for condoning the delay and, therefore, the said application deserves to be rejected.

7. Even if, for the sake of arguments, we proceed further and hold that reasonable ground was shown, then it is required to be seen as to whether substantial questions of law can be framed in this case. Submissions on behalf of both the parties have been heard on this point also.

8. Learned Advocate for the appellant has submitted that both the Courts below have not considered the evidence, pleadings and submissions properly. He submitted that the suit property was the ancestral property of the plaintiff and the basic ownership is not challenged by the defendants, but they were challenging the boundaries. Both the Courts below did not consider the evidence, therefore, in

proper perspective and went on to discuss about the boundaries and not in respect of the possession. According to him, therefore, substantial questions of law are arising, whereas the learned Advocate for the respondent supported the reasons given by both the Courts below and submits that no substantial questions of law are arising.

9. At the outset, it is to be noted that the defendants had challenged the ownership of the plaintiff of the land of which description was given with boundaries by the plaintiff in her plaint. They had also denied the theory of partition as projected by the plaintiff. According to them, the suit property is a joint family property of plaintiff's husband, her sons and her mother-in-law. They had then further contended that the husband of the plaintiff had sold 60 R land of East-South corner in the year 1996 to one Rajasinh. Those boundaries have been given, which was put to sale by the husband of the plaintiff. Thereafter, again on 29.08.1997, the husband of the plaintiff had sold 81 R land out of remaining 2 H 80 R to one Hidayatkha. Those boundaries are also mentioned. Further, in the year 1999, Baliram i.e. husband of the plaintiff repurchased 81 R land from Hidayatkha in the name of his son on 07.06.1999 and again Baliram purchased 20 R land which was earlier sold to Rajasinh. Therefore, the defendants contended that the joint family headed by Baliram was the owner of 3 H land. The

defendants further contended that Baliram had sold 49 R land to defendant No.2 Shantabai and after that sale-deed, according to the defendants, Baliram was the owner of land to the extent of 2 H 51 R out of Gut No.287. Plaintiff, in fact, had contended that her husband had effected partition of the ancestral property in the year 1991-1992, wherein she was allotted total area of 1 H 70 R of which boundaries were given by her and in the capacity of owner thereof, she had filed the said suit. Taking into consideration these contentions, specific issue was framed regarding ownership and possession of the plaintiff. Both the Courts below have considered not only the oral evidence but also the documentary evidence that has been produced on record. This Court, by order passed on the last occasion, had directed the appellant to produce the paperbook of the first Appellate Court, however, learned Advocate for the appellant has expressed his inability. Therefore, we are constrained to go by the two impugned judgments. It appears that the details of the partition that had allegedly taken place in the year 1991-1992 has not been given by the plaintiff. There could not have been partial partition restricting it to the plaintiff only. It appears that the plaintiff deposed that the said partition had taken place in presence of her brothers, but it has been observed by the Trial Court that those persons have not been examined. One of the adjacent holder has been

examined, but he is giving the different story that since the husband of the plaintiff was habitual drinker and involved in gambling, plaintiff asked her share to be separated. In fact, it is against the law. The wife cannot ask the husband to separate her share during the lifetime of the husband. Further, this itself is also an improvement and not the case of the plaintiff. Suffice it to say that there is no such concrete, cogent and material evidence to show the ownership of the plaintiff much less the possession. In other words, no such specific evidence was adduced to show that there was legal partition between all the holders and the area, of which boundaries have been given by the plaintiff, was put to her ownership and possession and, therefore, both the Courts taking into consideration the facts of the case correctly held that the plaintiff has failed to prove her ownership and possession. The findings are not perverse and, therefore, not leading to any substantial questions of law as contemplated under Section 100 of Code of Civil Procedure.

10. Thus, even if we hold that the application for condonation of delay could have been allowed, yet, there was no merit in the second appeal. Hence, the civil application stands dismissed.

[SMT. VIBHA KANKANWADI, J.]

scm