

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CIVIL APPLICATION NO.4731 OF 2021  
IN SAST/20222/2020  
WITH  
CIVIL APPLICATION NO.4732 OF 2021

VITHAL VISHWANATH YELKAR  
VERSUS  
RAM VISHWANATH BHADARGE AND OTHERS

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Mr. K.V. Patil, Advocate for the applicant  
Mrs. M.S. Mhase, Advocate for respondent Nos.1 to 4

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CORAM : SMT. VIBHA KANKANWADI, J.  
RESERVED ON : 30<sup>th</sup> SEPTEMBER, 2021.  
PRONOUNCED ON : 15<sup>th</sup> NOVEMBER, 2021

**ORDER :**

1 Civil Application No.4731 of 2021 has been filed for condoning the delay of 41 days in filing Second Appeal. The applicant is the original plaintiff, who had filed Regular Civil Suit No.190/2010 before Joint Civil Judge Junior Division, Nilanga, Dist. Latur for perpetual injunction. The said suit came to be dismissed on 30.11.2013. The First Appeal filed by the original plaintiff bearing Regular Civil Appeal No.2/2014 has been dismissed

by learned District Judge-1, Nilanga on 24.09.2019. Original plaintiff wants to file Second Appeal, however, there is delay of 41 days.

2           The applicant has come with a case that he had no knowledge about the dismissal of his appeal due to the communication gap between him and his Advocate, who was representing him in the First Appellate Court. He says that the delay is unintentional and, therefore, deserves to be condoned.

3           Though the learned Advocate for the respondent Nos.1 to 4 is strongly objecting; taking into consideration the duration of the delay and the fact that the parties are coming from the rural area, the delay deserves to be condoned. Accordingly it is condoned.

4           By consent of learned Advocates representing both the parties the matter was taken up for admission immediately and the submissions have been heard at length. Both of them have made submissions in support of their respective contentions.

5           It is now required to be seen, as to whether the appellant has shown that there is scope for framing substantial question of law, as contemplated under Section 100 of the Code of Civil Procedure. Plaintiff had come with a case that he had purchased 86 R land from one Omkar Pol and 5

R land of respondent No.1 from Sy. No.16 situated in village Shend, Tq. Nilanga, Dist. Latur on 07.05.2004. It is the contention of the plaintiff that land admeasuring 21 R belonging to the respondent No.1 was acquired by the Government of Maharashtra for canal in 1987. Again in 1992 from the same Gat number 70 R land was acquired from respondent No.1 for extension of the said canal. Plaintiff contends that because of those acquisitions only 01 R land was left with respondent No.1, however, due to not taking entry in the 7/12 extract in respect of acquisition of 70 R land, respondent No.1 has taken disadvantage and transferred 70 R land in favour of respondent No.2. According to the plaintiff, the possession of 70 R land is not with respondents, but it is with the Government. Still the respondents are obstructing him and, therefore, he filed the suit.

6           Original defendant Nos.1 and 2 denied all the averments and submitted that the boundaries given by the plaintiff in the pleadings are different from the boundaries in the sale deed of the plaintiff and, therefore, he cannot seek injunction as prayed.

7           Both the Courts below have held that the plaintiff has failed to prove his lawful possession over the suit land and, therefore, he has been held to be not entitled to get the relief of permanent injunction.

8           It can be gathered from the pleadings, evidence and the contents of both the impugned Judgments that the dispute is mainly in respect of Eastern side boundary of the suit land. In the pleadings the plaintiff has given the boundary towards East as “Government canal and then after the land of defendant which has been acquired by Government”. However, if we see his sale deed, it is stated as - “पूर्वेस मसलगा कॅनॉल व देणार कं.2 ची शिल्लक जमीन”. Thus, the inconsistency has been brought on record. We will have to go by the documents and not by pleadings. Both the Courts have held that it appears from the record that twice the land belonging to respondent No.1 was acquired but who is actually in possession is not concerned to the plaintiff. Plaintiff has not shown, as to where the remaining 01 R land of the defendant is situated. No authentic map of the site was produced before the Trial Court. Plaintiff has not examined his one of the predecessors i.e. Omkar Pol. If we go by the boundary shown in the plaint, then, immediately towards the East of the suit property there would be Government canal and in that case how and in what manner the defendants would try to dispossess him, taking disadvantage of the revenue record, is not understandable. The story put forward by the plaintiff is unacceptable on the preponderance of probabilities and, therefore, the discretion has been rightly used by both the Courts in rejecting the relief. No substantial questions of law, as contemplated under Section 100 of the Code of Civil Procedure, are arising in

this case, requiring admission of the Second Appeal. It deserves to be dismissed.

9 As a consequence of the discussion, following order is passed.

**ORDER**

1 Civil Application No.4731 of 2021 stands allowed and disposed of. Registry to verify and register the Second Appeal.

2 The Second Appeal stands dismissed at the stage of admission itself.

3 Civil Application No.4732 of 2021 for stay stands disposed of, in view of dismissal of the Second Appeal.

**( Smt. Vibha Kankanwadi, J. )**

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