

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO.9378 OF 2017
IN SAST/35212/2016
WITH
SECOND APPEAL (STAMP) NO.35212 OF 2016**

SUBHASH S/O MOHANRAO WADKUTE AND OTHERS
VERSUS
PANJABRAO S/O DHONDBARAO WADKUTE

...
Advocate for Applicants : Mr. P. S. Agrawal
Advocate for Respondent : S. G. Dodya
...

**CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 06-08-2021.**

ORDER :

- 1) The present civil application has been filed by the original defendants for getting a delay of 373 days condoned in filing a second appeal. The applicants want to challenge the concurrent Judgment and decree passed by the Courts below.
- 2) Heard learned Advocate Mr. P. S. Agrawal for applicants and learned Advocate Mr. S. G. Dodya for respondent.
- 3) Though the learned Advocate appearing for the respondent has strongly opposed the application, it can be seen that the applicants are coming with a case that they are from drought area they had left the village and went out for earning for livelihood. They were not aware of

the decision by the First Appellate Court and, therefore, there is a delay. By taking a liberal view, the delay deserves to be condoned, accordingly, application stands allowed and disposed of.

4) Simultaneously, the second appeal was taken for admission at this stage itself with the consent of both parties.

5) Heard learned Advocate Mr. P. S. Agrawal for applicants/appellants and learned Advocate Mr. S. G. Dodya for respondent on the point of admission of the second appeal also. In order to cut short, it can be said that both of them have vehemently made their submissions supporting their respective contentions.

6) The present respondent/original plaintiff had filed Regular Civil Suit No.49 of 2009 before Civil Judge, Junior Division, Sengaon, Taluka Hingoli for a permanent injunction. It was his contention that he is the owner and possessor of land bearing Gut No.53 admeasuring 51 R and land Gut No.97 admeasuring 1 H 41 R situated at village Babhulgaon, Taluka Sengaon, District Hingoli. He had purchased it on 31-12-1990 from one Nilabai Wadkute. It was the contention of the plaintiff that the defendants are obstructing his possession and, therefore, they should be restrained.

7) The present appellants resisted the said suit by saying that the suit property was originally owned by one Mohanrao Babarao who expired in the year 1990 and, thereafter, they were cultivating the suit land. Their names were not taken on the 7/12 extract. It is the ancestral property of the defendants. Some portion from land Gut No.97 was acquired by the Government. Now no land from that gut number belonging to the plaintiff is remaining, however, that deletion was not done by the Talathi in the 7/12 extract of which the plaintiff is taking disadvantage. They are also trying to take the help of the consolidation scheme that was implemented in the village.

8) Both the Courts below have considered the oral as well as documentary evidence on record and held that plaintiff has proved that he is the owner and possessor of the suit property and, therefore, the suit was decreed, defendants were restrained.

9) It appears that the defendants have not produced any documentary evidence. Rather after they had filed the written statement, they remained absent and they have not challenged the evidence that was adduced by the plaintiff. Important point to be noted is that it appears that the appellants had not tried to give any cogent reason for their absence after the evidence of the plaintiff

was closed. In the appeal memo, there was a prayer for remand of the matter, however, no reason for the absence of the defendants has been given in the same. It also appears that before the learned First Appellate Court, the prayer for remand of the matter was not seriously pressed, but there is observation by the First Appellate Court that the defendants have purposely remained absent in order to prolong the hearing of the suit. Another fact that is required to be noted is that along with the written statement, the defendants were supposed to produce the documentary evidence and they could not have waited for their turn to come for adducing evidence. Under such circumstances, when they are not giving any sufficient and cogent reason for their absence and also for not producing the relevant documents on record which might be definitely only public record which could have been also seen in absence of any oral evidence, yet for the reasons best known to them, it is not produced. Under such circumstances, no substantial questions of law can be said to be arising in this case requiring admission of the second appeal, it deserves to be rejected, accordingly, it is rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA
J

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by GAWADE
VIRENDRA J
Date: 2021.08.25
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