

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL (ST.) NO.12646 OF 2020

Rajkumar Shivraj Mathpati and others .. Appellants

Versus

Satyabhama Chandrakant Tandale
Since deceased thr. her LRs
Sunil Chandrakant Tandale and others .. Respondents

...

WITH

**CIVIL APPLICATION NO.134 OF 2022
CIVIL APPLICATION NO.135 OF 2022
CIVIL APPLICATION NO.140 OF 2022**

....

Advocate for the Appellants : Mr. Subodh P. Shah
Advocate for Respondent Nos.1A to 1D and 2A : Mr. P.R. Tandale

....

CORAM : MANGESH S. PATIL, J.

DATE : 14-01-2022

ORAL ORDER :

. This is a second appeal under Section 100 of the Code of Civil Procedure (for short 'C.P.C.') along with an application for leave to appeal filed by the appellants being aggrieved and dissatisfied with the dismissal of their Misc. Application No.01 of 2018 by the lower appellate court thereby refusing to condone a delay of more than 24

years in challenging the judgment and decree passed by the learned Civil Judge, Jr. Division in a suit filed by the predecessors of respondent nos.1 to 5 against rest of the respondents for possession of encroached portion of a plot.

2. I have heard Mr. Shah, learned advocate for the appellants as also Mr. Tandale, learned advocate for respondent nos.1A to 1D and 2A.

3. The facts leading to filing of the Second Appeal may be summarised as under:

(a) The predecessor of respondent nos.1 to 5 filed the suit for possession of the encroached portion against the predecessor of respondent nos.6 to 9 by name Shivaji and respondent no.10, bearing Regular Civil Suit No.101 of 1981. The suit was dismissed as against respondent no.10. The predecessor of respondent nos.6 to 9 contested the suit by filing a written-statement. The suit was decreed on 12-03-1992 against him.

(b) The decree became final and respondent nos.1 to 5 put the decree to execution by filing Regular Darkhast No.16 of 2002.

(c) The predecessor of the appellants namely Gurammabai purchased the suit property under a sale-deed dated 11/01/1983 from one Manmathappa Nagthane. Manmathappa had purchased it from Subhash Shivrudrappa Patil.

(d) Shivrudrappa had purchased it from Shivajirao Pundlik Patil, who was defendant no.1 and the predecessor of respondent no.3.

(e) Alleging that for the first time the appellants came to know about passing of the decree when the bailiff reached their doorsteps with the possession warrant in the year 2014, the appellants raised an objection under Order-XXI, Rule-97 of the C.P.C. in the execution proceeding.

(f) The executing court rejected the objection including an application for leading evidence to support the objection on 25-02-2015.

(g) The appellants preferred Regular Civil Appeal No.19 of 2015 and it was allowed on 22-02-2016 whereby the matter was remanded for consideration of the objection afresh.

(h) The respondent nos.1 to 5 challenged that order of

remand by preferring Appeal from Order No.22 of 2016 which was allowed and the objections were rejected by the order of this Court dated 16-03-2017.

(i) The appellants challenged the order in Special Leave to Appeal No.19609 of 2017, but it was dismissed.

(j) The appellants then instituted Regular Civil Suit No.494 of 2017 seeking a declaration that the decree was not binding on them and for injunction.

(k) In that suit the appellants filed application (Exh.5) for temporary injunction, but it was rejected.

(l) Misc. Civil Appeal No.26 of 2017 was preferred by the appellants challenging the order of the trial court refusing injunction, but it was dismissed.

(m) The appellants preferred Writ Petition No.1029 of 2018, but it was dismissed as withdrawn.

4. It is in the backdrop of such events the appellants preferred the appeal seeking to challenge the original decree. Since there was a delay, they filed application for condonation of delay

which has been rejected by the order under challenge.

5. Learned Advocate Mr. Shah would vehemently submit that going by the chronology of the events, when the appellants were not the parties to the suit, one could have easily comprehended that they were not even aware about passing of the decree till the year 2014. Though *ex facie* there was delay of more than 24 years, in peculiar facts and circumstances, it would have been appropriate to expect the appellants who have explained the delay only from the year 2014. He would then submit that the aforementioned events would clearly indicate that irrespective of the applicability of the provision of Section 14 of the Limitation Act, these were sufficient to demonstrate a reasonable cause for not preferring the appeal in time challenging the original decree. They had made a reasonable attempt to raise an objection to the execution of the decree, however since they could not succeed there was no alternative but to challenge the original decree putting up their own right. Except by way of such a challenge the appellants would not be able to establish their right and interest in the property. The decision in their objection would not operate as a *res judicata*. There were sufficient and cogent reasons which should have compelled the appellate court to cause interference in the decree. The predecessor of the appellants had not

directly purchased the property from a party to the suit. There were several persons who had from time to time transferred it which was ultimately purchased by their predecessor. They could not have been expected to know such remote transactions. Learned advocate Mr. Shah, therefore, submits that there has been a sufficient cause which should have been appreciated by the lower appellate court by taking a pragmatic view.

6. So far as the facts are concerned, learned advocate Mr. Shah would submit that one Baswant Ladade was the original owner of a plot adm. 60 x 55 feet who had sold it to one Laxmibai Lingappa under a sale-deed dated 08-07-1963. It is thereafter that he executed an agreement of sale in respect of the entire land adm. 8.5 Are from Survey No.289 in favour of the predecessor of respondent nos.1 to 5. Since the plot was already sold to Laxmibai, Baswant could not have legally agreed to sell it to the predecessor of the respondent nos.1 to 5. It is thereafter that Laxmibai sold it to one Chandrakant Chinchole and then it kept on changing hands till appellants' predecessor Gurammabai purchased it. All these facts were not brought to the notice of the trial Court and were important to be considered for deciding the rival claims of the parties. A serious prejudice would be caused to the appellants if the delay is not

condoned. All these facts and circumstances were ignored by the appellate court by the order under challenge and the error be corrected.

7. Learned advocate Mr. Shah would, lastly, submit that substantial question of law would arise in this Second Appeal as is mentioned in the appeal memo and the appeal be admitted and the execution be stayed.

8. Learned advocate Mr. Tandale for respondent nos.1 to 5 takes me through the entire history once again and submits that by no stretch of imagination can it be said that there was sufficient cause for the appellants not to challenge the decree in time. Even if it is assumed that they were not party to the suit and they became aware about passing of the decree in the year 2014, still, instead of challenging the decree the appellants made every attempt to create obstacles in execution of the decree which had reached finality. He would further submit that even the conduct of the appellants is not *bona fide*. Initially, they tried to obstruct the execution proceeding and were adamant enough to reach up to the Supreme Court. Once their objection was rejected they chose to file a separate civil suit and claimed temporary injunction. Having failed to obtain any temporary

injunction up to this Court, an attempt has been made to further protract the execution of the decree. Even if Section 14 of the Limitation Act is ignored, still this conduct of the appellants clearly disentitles them from getting a discretionary relief. All these facts and circumstances have been duly considered by the appellate court while refusing to condone the delay. The order does not suffer from any perversity or arbitrariness much less giving rise to any substantial question of law.

9. Learned Advocate Mr. Tandale would also submit that in spite of not being parties to the decree, the appellants attempted to challenge it by filing an appeal under Section 96 of the C.P.C., even without seeking any leave of the Court. It is only when respondent nos.1 to 5 raised an objection that subsequently an application was filed before the Appellate Court seeking leave to appeal. This conduct further demonstrates that the attempt of the appellants to challenge the decree is not *bona fide*.

10. I have considered the rival submissions. The aforementioned facts are not in dispute. The question to be answered is as to whether in the facts and circumstances, there was sufficient ground for the appellate court to condone the delay in filing the

appeal.

11. Accepting the submissions of the learned Advocate Mr. Shah and appreciating all the events that preceded the proceeding before the appellate court, it is well nay clear that by no stretch of imagination can the appellants be said to have lost precious time *bona fide*.

12. Assuming that not being the parties to the suit they became aware about the passing of the decree in the year 2014, still the further events would demonstrate that one after the other they kept on pursuing some or the other remedy, firstly, by raising an objection in the execution and then filing a separate suit. It is after they failed to obtain any relief in either of these proceedings that they have made this third attempt to challenge the decree to which they were not parties.

13. Again as has been rightly pointed out by Mr. Tandale care was not taken to prefer the appeal by seeking any leave of the court even when they were not parties to the suit. Therefore, I find no apparent error committed by the appellate court in holding that there was no sufficient cause to condone the delay.

14. There is one more aspect. Admittedly, the appellants are the purchasers *pendente lite*. In their delay condonation application on which the order under challenge is passed, they never attributed their predecessors with any fraud or misrepresentation. If a party who is a purchaser *pendent lite* is allowed to raise such an objection as is being now sought to be raised and seeking to challenge the original decree after more than twenty four years, there would be no end to the litigation. If they have not taken care before purchasing the property during the pendency of the litigation, they should blame themselves for the situation they are in.

15. In any case, no substantial question of law arises for consideration at the hands of this court. The Second Appeal is dismissed.

16. In view of disposal of Second Appeal, nothing survives for consideration in Civil Application Nos.134 of 2022, 135 of 2022 and 140 of 2022 and the same stand disposed of.

(MANGESH S. PATIL)
JUDGE