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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 5156 OF 2018

SHIVAJI KASHINATH GHARGE

....PETITIONER

V/s.

RAMESH KASHINATH GHARGE AND ORS RESPONDENTS

Mr. Dhananjayrao D. Rananaware Advocate for the Petitioner
Mr. Milind Deshmukh Advocate for the Respondent nos. 2 to 4

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 7, 2022.

P.C.:

- 1) After the suit for partition was initiated on 1/09/1999, ex-parte Decree was passed against petitioner on 6/11/2001.
- 2) Alleging that he was not having knowledge about the aforesaid suit as suit summons was served at different address and forming basis as to notice of measurement dated 19/08/2003, Application Exh. 1 was taken out by the petitioner for condonation of delay in moving for setting aside ex-parte Decree which is rejected vide order

impugned dated 04/10/2017 passed by Civil Judge Junior Division, Vaduj in Civil Misc. Application No. 14 of 2003. As such, this position.

3) The contentions of learned counsel for the Petitioner are, at the relevant time, he was working with BEST and was posted at Anik depot, not Kurla depot where suit summons was sought to be served. Said fact was duly established based on certificate issued to that effect by the depot manager on 9/12/2016 which is a public document. It is claimed that documentary evidence shall prevail over oral evidence even if the Petitioner has given an admission that at the relevant time he was working with Kurla depot. Drawing support from the judgement of Apex court in the matter of **Ghikkam Koreswara Rao V/s. Chikkam Subba Rao**¹ it is claimed that Court below committed an error in disbelieving the certificate, a public document issued on 9/12/2016.

4) Further contentions are, for the first time, knowledge was received about ex-parte Decree when the notice for measurement was received on 19/08/2003 and as such immediately steps were taken by initiating proceedings along with application for condonation of delay. It is claimed that suit is for partition and the petitioner will be losing

¹ 1971 AIR (SC) 1542

his interest in the entire self acquired property.

5) The contentions are opposed by counsel for the respondent and supported the order impugned.

6) Perused the order impugned and documentary evidence.

7) It is a fact that though the petitioner was residing in Mumbai while serving as driver with BEST establishment, his entire family was residing in the village. Admission given by the petitioner that he was working in Kurla depot when the suit summons was sought to be served at the same place sufficiently establishes the knowledge of the petitioner about the suit in question.

8) In the wake of aforesaid background, it is difficult to accept that petitioner was served with suit summons at a wrong place and delay caused in preferring the application for condonation of delay and setting aside ex-parte Decree is justified in the factual background.

9) Fact remains that even if the petitioner was served in Mumbai, his family was very much residing in the village in the suit property.

10) All the facets of the matter were duly looked into and appreciated by the court below. That being so and having regard to the

fact that delay is not explained, I hardly see any reason which warrens interference in the extraordinary jurisdiction of this court. Petition as such fails stands dismissed.

[NITIN W. SAMBRE, J.]