

Madhukar Bhika Shinde and ors .. Appellants

Versus

Suresh Dattu Shinde and anr .. Respondents

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Mr. Prashant Darandale for the appellants.  
Mr.Sandeep P. Sharma for the respondents.

CORAM: BHARATI DANGRE, J.  
DATED : 20<sup>th</sup> APRIL, 2022

**P.C:-**

1           The present Appeal assail the decree passed by the  
trial Court, declaring the plaintiffs to be jointly entitled for 2/3rd  
share in the suit property and the defendants entitled for 1/3rd  
share.

The Regular Civil Suit No.189 of 2010 came to be filed by the plaintiffs, seeking partition and separate possession in

respect of the suit property set out in the plaint, being an agricultural land situated at Khed. The defendants appeared in the Suit and filed their written statement traversing the claim staked by the plaintiff and denied the alleged share of the plaintiffs. The plaintiffs examined the witnesses in support of the claim and the Suit came to be decreed on 11/3/2015. The defendants (appellants herein), being aggrieved by the said judgment and decree filed in Miscellaneous Civil Application No.13/2018 and since it was delayed by a period of 3 years and 15 days, an application for condonation of delay was also accompanied along with the Appeal Memo.

2           The said application, when carefully perused, and meaningfully read, put the burden on the counsel, when it is specifically pleaded that the defendants had engaged the services of a counsel to defend the RCS No.189/2010, which was decided ex-parte without the defendant on 11/3/2015. What is sought to be canvassed is that the defendant nos.2, 3 and 5 are residents of Mumbai and similarly, defendant no.4 is employed on a private vehicle and has to stay out of station for months and the defendant no.1 being an agriculturist, a senior citizen, and illiterate, was not conversant to the procedural formalities. The contention raised in the application is to the effect that they were assured by their counsel that whenever their matter will be listed, they will be intimated and after filing of the Suit, which normally consume a period of about 2 to 3 years to settle the issues and in

paragraph no.2 of the application, it is specifically pleaded that on this assurance that they were waiting for an intimation from the Advocate personally or through the letter for remaining present in the proceedings, but they never received any information. It is only in April 2018, when they received a notice for demarcation of the property, they became aware that the suit has been decreed on 11/3/2015 in their absence and that is why the Miscellaneous Appeal came to be preferred along with the application for condonation of delay.

2                In support of the said application, the defendant stepped into the witness box and was subjected to extensive cross-examination. The cross-examination got certain admissions on record and the applicant no.1, who stepped into the witness box categorically admitted that after entrusting the case papers to the counsel, he used to meet him often and had discussion with him regarding his case. Further, he also admit that he was also in touch with him on telephone and kept on inquiring with the lawyer about the progress of his case. From the year 2010-2018, it is admitted that he used to visit the lawyer at least once in a month. The aforesaid admissions has proved costly to him, when the learned Judge considered the application and appreciated the aforesaid admission, in contrast to the reason in the application, that the defendants were waiting for call/intimation from the lawyer, to remain present in the proceedings to prosecute it, but since they never received such information and only at the later

stage, when the decree was sought to be executed, they became aware of the suit being decreed three years back. Apart from this, the learned Judge has also recorded that the applicant no.1 was residing in Rajguru Nagar itself, and therefore, this did not preclude him from visiting the lawyer, which he has categorically admitted. Recording that, no case is made out for showing any diligence in condoning the delay of 3 years 15 days, the Appeal came to be dismissed.

On perusal of the said judgment, I am of the considered opinion that the learned Judge has rightly refused the application for condonation of delay since it is the settled position of law that the party who approaches the Court must offer a satisfactory and justifiable explanation for the delay. Here is a party who is putting the entire blame on the counsel and when particularly being cross-examined on the aspect whether they initiated any action against his counsel, has answered in the negative.

Since no substantial question of law arises in the appeal, the same is dismissed.

No order as to costs.

In view of the dismissal of Second Appeal, Interim Applications do not survive and are disposed off.

**( SMT. BHARATI DANGRE, J.)**