

Pooja K.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 3827 OF 2006
IN
SECOND APPEAL (ST) NO.2922 OF 2006
AND
SECOND APPEAL (ST) NO. 2922 OF 2006
WITH
CIVIL APPLICATION NO. 3828 OF 2006
IN
SECOND APPEAL (ST) NO. 2922 OF 2006

Balasaheb Baburao Hawale and Anr.	... Applicants
<i>Versus</i>	
The State of Maharashtra and Ors.	... Respondents

...
Mr. S.S. Choudhary – Advocate for Applicants
Mr. S.B. Pulkundwar – AGP for Respondent No.1, State
....

CORAM : GAURI GODSE, J.
DATE : 6th February, 2023

PER COURT :

CIVIL APPLICATION NO. 3827 OF 2006

1. This application is filed for condonation of delay of 16 days in filing the Second Appeal. Notice was issued to the respondents and all the respondents are served except respondent no.3. As per courts' order dated 29th July, 2016, application stands abated against respondent no.3.

2. Learned A.G.P. appears on behalf of respondent no.1.
3. There is no affidavit-in-reply filed for opposing this application.
4. For the reasons stated in the application, it is allowed in terms of prayer clause 'B', which reads as under :

“B. The delay of 16 days occurred for preferring the Second Appeal may kindly be condoned.”

SECOND APPEAL (ST) NO. 2922 OF 2006

5. This Second Appeal challenges concurrent decree thereby dismissing the suit filed by the appellants. Appellants had filed Regular Civil Suit No.258 of 1990 seeking declaration and injunction. The Joint Civil Judge Senior Division, Beed dismissed the suit by judgment and decree dated 25th June, 1997. The trial judge recorded the findings with respect to suit property being declared as evacuee property and that there was allotment in favour of respondent no.3 by Sanad Settlement Commission and the remaining land was reserved for the Government purposes. The case of appellants with respect to encroachment on the road as shown in the map, was not accepted by the trial court. The case of the appellants that, the

suit property was used by their vendors and that the same was never allotted to respondent no.3, was not accepted by the trial court. The said decree was challenged by the appellants by filing Regular Civil Appeal No.190 of 1997. By judgment and decree dated 28th October, 2005, the 2nd Ad-hoc Additional District Judge, Beed dismissed the appeal and confirmed the decree passed by the trial court.

6. Learned counsel appearing for the appellants submit that, both the courts have failed to consider the documents on record which show that, there was in fact encroachment as pleaded by the appellants. Learned counsel for the appellants further submitted that, the documentary evidence on record was not properly appreciated by both the courts and suit is wrongly dismissed.
7. Perusal of the judgment of the trial court shows that, all the documentary evidence that was produced by the present appellants were examined by the trial court and the evidence of D.I.L.R. with respect to the measurements was also considered by the trial court. Thus, by examining the documents on record,

the trial court concluded that the appellants failed to prove that they had any right over the disputed part of the suit land. The said findings of fact has been confirmed by the appellate court by re-appreciating the evidence on record. The submissions made by the learned counsel for the appellants are on the basis of factual aspects, which will require re-appreciation of evidence, which is not permissible under Section 100 of the Code of Civil Procedure, 1908. The Second Appeal do not raise any question of law. Hence, Second Appeal is dismissed.

8. In view of the dismissal of the Second Appeal pending Civil Application also stands disposed of.

[GAURI GODSE]
JUDGE