

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

CIVIL APPLICATION NO. 11791 OF 2023
IN
SECOND APPEAL (ST) No. 32571 OF 2021

RAMDAS DATTATRAO KADAM AND OTHERS
VERSUS
SANTOSH RAMESHRAO KAMBLE

...
Advocate for Applicants : Mr. N. P. Wangikar
....

CORAM : S. G. MEHARE, J.

DATE : 23.10.2023

PER COURT :

1. Heard the learned counsel for applicants.
2. The applicants have preferred this Second Appeal against two concurrent Judgments of the perpetual injunction against them. There was a delay of 973 days in preferring the Second Appeal.
3. Heard the learned counsel for the applicants. He would submit that the trial Court has erroneously framed the issue of possession in a suit simpliciter for injunction. There was a cloud over the possession. This may be a substantial question for consideration in order to protect the rights of litigants.

4. The Court examined both Judgments to find out whether a lenient view is to be taken for condonation of delay. The suit was for mandatory injunction. The respondent/plaintiff claimed that he was in possession on the date of filing the suit. The suit was based on title, so in order to protect the possession, the Court had correctly framed the issue of whether the plaintiff was in possession of the suit property. There is no mistake on the part of the trial Court. The learned Appellate Court has also taken the same view. There is no substantial question of law involved in this appeal.

5. Even if delay is condoned, the Second Appeal could not be admitted. Hence, the Civil Application for condonation of delay stands dismissed.

(S. G. MEHARE)
JUDGE

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