

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 97 OF 2019
WITH
CIVIL APPLICATION NO. 173 OF 2019
WITH
CIVIL APPLICATION NO. 1312 OF 2019
IN
SECOND APPEAL NO. 97 OF 2019**

Shri. Ramchandra Bhanudas Wakade ... Appellant
v/s.
Shri. Bharat Bahu Surpuse and ors. Respondents

Mr. Rajepandhare Sachin Kumar Pradiprao for the Appellant.
Mr. Ajay A. Joshi a/w. Ms. Pranali Railkar for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 04th OCTOBER, 2023.

P. C. :-

. The Appellant challenges the order dated 12/12/2017 passed by the learned District Judge, Pandharpur dismissing the Application filed under section 5 of the Limitation Act, seeking to condone the delay of 3 years and 6 months in filing the Appeal.

2. Heard learned counsel for the Appellant and learned counsel for the Respondent Nos.1 and 2. I have perused the records and considered the submissions advanced by the learned counsel for the

respective parties.

3. The Respondent Nos.1 and 2 were the plaintiffs in the Suit No.113/2000 whereas the Respondent Nos.3, 5 and 4, the parents and the sister of the plaintiffs, were the Defendant Nos.1, 2 and 3. The Respondent No.6 who was the original purchaser and Respondent Nos.7, 8 and 9, the subsequent purchasers, were Defendant Nos.4 to 7 respectively. For the sake of convenience, the aforesaid parties shall be referred to by their status in the Trial Court.

4. The Defendant no.1, since deceased, by deed of sale dated 24/01/1994, sold to the Defendant No.4 the ancestral property under Gat No.160/1 at Jainwadi Pandharpur. The Defendant no.4 in turn sold the property to Defendant No.5 and the Defendant No.5 sold the property to Defendant No.6, who in turn sold it to Defendant No.7. The Appellant purchased the property from Defendant No.7 during the pendency of the suit. He was not a party to the suit.

5. The Plaintiffs claimed that the sale deed executed by his father in favour of Defendant No.4 was not for the benefit of the family. The Plaintiffs filed a suit essentially for a declaration that the sale deed

executed by their father-Defendant No.1 in favour of Defendant No.4 was not binding on them. The Plaintiffs also sought partition of the property as per their respective shares.

6. The Defendant No.4 did not adduce any evidence, though he had filed the written statement alleging that the Defendant No.1 had sold the property to repay the loan availed for the benefit of the family and that the said sale deed is binding on the Plaintiffs and the other family members. The subsequent purchasers i.e. Defendant Nos.5, 6 and 7 did not contest the suit despite service of summons.

7. The trial Court upon considering the evidence adduced by the plaintiffs, recorded a finding that the suit property was an ancestral property and that the sale deed dated 24/01/1994 executed in favour of Defendant No.4 was not for the benefit of the joint family. The trial court therefore held that the said sale deed is not binding on the Plaintiffs and Defendant nos.2 and 3 and declared that they have 1/4th share each in the suit property. The trial court held that the Defendant No.4 alongwith the subsequent purchasers, is entitled for remaining 1/4th share in the suit property.

8. The Appellant herein, who is a transferee pendente lite filed an appeal alongwith an application under Section 5 of the Limitation Act to condone the delay of 3 years and 6 months in filing the appeal. The Appellant claimed that he had learnt about the said decree only on receipt of notice of execution dated 25/07/2016 in Regular Darkhast No.1/2014.

9. The learned Judge observed that the decree has already been executed. The learned Judge further held that the predecessor of the Appellant had not contested the suit despite service of summons. Furthermore, the execution notice was received by the Appellant on 16/05/2016 whereas the Application for condonation of delay was filed on 23/09/2016 without explaining the delay of 04 months in filing the appeal and the application. The learned Judge therefore held that the Appellant had failed to make out sufficient cause to condone an inordinate delay in filing the appeal and hence dismissed the application. Being aggrieved by the order the Appellant has filed this appeal under Section 100 of the CPC.

10. There is no dispute that the expression 'sufficient cause' in Section 5 of the limitation Act must receive a liberal construction so as

to advance substantial justice. However, what would constitute sufficient cause would depend on the factual matrix of each case. In the instant case, the Appellant has sought to condone the delay mainly on the ground that he was not aware of the judgment and decree dated 29/01/2013 in original Suit No.113/2000 (176/2004). The records reveal that the defendant no.1 had sold the ancestral property to Defendant No.4. The Plaintiff had filed a suit stating that the said sale deed was not for the benefit of the family and hence, the sale deed was not binding on them. The records reveal that the suit property changed many hands thereafter. The Appellant herein had purchased the property from Defendant No.7 during the pendency of the suit. Being a transferee pendente lite, he has no independent right to the property over and above the right of the seller viz. Defendant Nos.4 to 7. It is pertinent to note that Defendant Nos.4 to 7 neither contested the suit nor challenged the decree as a consequence, the decree attained finality and the decree has been executed.

11. The Appellant, a transferee pendente lite, is presumed to be aware of the proceedings before the Court. It is well-settled that 'lis pendens' itself is constructive notice to the purchaser that he is bound by a decree in the pending suit. The Appellant, a transferee pendente

lite, who was not careful before the purchase of the property, cannot deprive the decree holder of the fruits of the decree on a specious plea that he was not aware of the decree.

12. Be that as it may, the records reveal that the Appellant had received the notice in the execution proceeding on 16/05/2016. The Appellant filed an application for leave to appeal on 23/09/2016 and an application for condonation of delay on 12/12/2017 after execution of the decree. The Appellant has not offered any explanation to condone the delay from the date of the knowledge or the receipt of the notice. In such circumstances, the learned Judge was perfectly justified in holding that the Appellant had failed to make out sufficient cause to condone the delay. The Appeal does not involve any substantial question of law. Hence, the Appeal is dismissed. Pending Civil/Interim Applications stand disposed of in view of dismissal of the Appeal.

13. Learned counsel for the Appellant seeks extension of the interim relief. The decree has been executed. Hence, I am not inclined to extend the interim relief.

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JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)