

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.85 OF 2023

FAUSTINA FERNANDES AND ANR

... APPELLANTS

Versus

EVILASIA COUTINHO MENDONCA ALIAS

DR. MARIA EVILASIA COUTINHO

MENDONCA AND 2 ORS

... RESPONDENTS

Mr A. D. Bhobe, Advocate for the Appellants.

Ms A. Rane, Advocate for the Respondents.

CORAM:- M. S. SONAK, J.

DATED :- 5th January, 2024

P.C.:

Heard Mr Bhobe, learned counsel for the Appellants and Ms A. Rane, learned counsel for the Respondents.

2. This Second Appeal challenges the order dated 27.06.2023 by which the First Appellate Court has refused to condone the delay of over three years in instituting an appeal against the judgment and decree dated 28.03.2018. As a consequence, the first appeal instituted by the present Appellants was dismissed. Hence, this Second Appeal.

3. Mr Bhobe submits that the Appellants were not aware of the decree dated 28.03.2018 because their power of attorney was supposed to be handling the matter. He submits that it is only after the execution

was taken out and the warrant of arrest was issued that the Appellants came to know about the decree and instituted an appeal against the same by seeking condonation of delay.

4. The Appellate Court has recorded a finding of fact that the Appellants were personally served in the suit and also in the execution proceedings. If despite service, the Appellants chose not to attend to the suit or in the execution proceedings, no fault can be found with the impugned order by which inordinate delay has not been condoned.

5. Besides, this is a case where the Appellants had sold the property to the Respondents (original plaintiffs). Ultimately, it was found that the Appellants had no title to the property as a result of the said sale deed was held to be of no consequence. The decree merely orders the Appellants to return the amount of Rs.3,10,000/- which the Appellants had admittedly taken from the Respondents as consideration for the sale of the property together with interest and compensation totalling to Rs.6,20,412/-. Therefore, even on merits, it is not as if any case is made out to interfere with the impugned decree.

6. The amount of Rs.3,10,000/- was paid by the Respondents to the Appellants at the time of the execution of the sale deed dated 22.02.2007. Till date, the Respondents have not received any amount. There is no question of law, much less any substantial question of law involved in this Second Appeal. Accordingly, this Second Appeal is

liable to be dismissed and is hereby dismissed.

7. The Civil Application, if any, would not survive the disposal of this Second Appeal and consequently, the same is also dismissed.

M. S. SONAK, J.

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