

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1111 OF 2019
IN
SECOND APPEAL (ST) NO. 8034 OF 2018**

Banubi Mirasaheb Patawegar (Patawekari) ... Applicants
through POA Arif Basuddin Tamboli and Ors

vs.

Dilwar Gulab Mahabari and Ors ... Respondent

Mr. Bhushan Walimbe a/w. Mr. Mayank Tripathi for Applicants.

CORAM : GAURI GODSE, J.

DATED : 27th NOVEMBER 2024

ORDER:

CIVIL APPLICATION NO. 1111 OF 2019.

1. This application is for condonation of delay of 241 days in filing the second appeal. Respondent nos. 1 to 7 are served and represented through advocate. Notice to respondent nos. 8 and 9 was returned unserved with the remark 'dead'.

2. Hence, heirs and legal representatives are brought on record. Respondent no. 9, is the original defendant no.9 in whose favour there is a declaration of ownership alongwith the plaintiffs.

Respondent no8, is the original defendant no.8. Defendant no.8 though duly served in the suit remained absent. Hence, the suit proceeded ex-parte against defendant no.8. Hence, in this application a fresh notice to respondent no. 8A is not necessary. Though represented, none appears today on behalf of respondent nos. 1 to 7 to oppose the condonation of delay application. Hence, in the facts and circumstances of the case, the delay is condoned.

3. Since the application is pending since 2018, I called upon the learned counsel for the appellants to point out whether the second appeal raises any substantial questions of law. Learned counsel for the applicant submits that the first appellate court accepted the plaintiffs' ownership based on the sale deed. However, by referring to the city survey record accepted plaintiffs' ownership only part of the suit property. He submits that the sale deed in favour of the plaintiffs is of the year 1951 and the city survey record relied upon by the first appellate court is pursuant to the survey carried out in the year 1973.

4. Learned counsel for the appellants thus, submits that the first appellate court ought to have decided the plaintiffs' claim based on the title document i.e. the sale deed and has erroneously relied upon the city survey record to accept the plaintiffs' ownership only

with regard to part of the suit property i.e. 101.48 square meters on the eastern side. Learned counsel for the appellants further submits that the defendants failed to prove their claim of ownership in respect of the disputed property. He thus, submits that the first appellate court ought to have accepted the plaintiffs' ownership over the entire property based on the sale deed in favour of the plaintiffs. He thus, submits that if the ownership of the plaintiffs with regard to the entire suit property is accepted and defendants fail to prove the ownership. The plaintiff would be entitled to possession of the entire suit property.

5. Learned counsel for the appellants thus, submits that the second appeal raises substantial questions of law on the aforesaid grounds regarding incorrect appreciation of the evidence on record.

6. I have perused the impugned judgement. The trial court dismissed the suit by disbelieving the plaintiffs' case that the suit property is owned by the plaintiff on the ground that it was an ancestral property purchased by the plaintiffs' predecessor in title.

7. The first appellate court accepted the validity of the sale deed relied upon by the plaintiffs. The first appellate court examined the description of the property in the sale deed and the entries in the city survey record with regard to the suit property. Based on the

description of the sale deed and the entries in the city survey record, the first appellate court recorded a finding of facts, the plaintiffs title document refers to ownership only to the extent of 101.48 square meters. The first appellate court in paragraph no. 23 of the impugned judgement has explained in detailed the description of the sale deed with reference to the plaintiffs' pleadings and the city survey record. The city survey record referred to by the first appellate court is not challenged by the plaintiffs. The findings recorded by the first appellate court are based on oral as well as documentary evidence on record.

8. I do not find any illegality or perversity in the reasons recorded by the first appellate court. Thus, in view of the findings of facts recorded by the first appellate court, the arguments raised on behalf of the appellants would require reexamination of the evidence on record is not permissible under Section 100 of the Civil Procedure Code, 1908.

9. Second appeal does not raise any substantial questions of law. Hence, the second appeal is dismissed.

10. It is thus, clarified that the judgement and decree passed by the first appellate court stands confirmed.

(GAURI GODSE, J.)