

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.352 OF 2020
IN
SECOND APPEAL (STAMP) NO.22492 OF 2019
WITH
SECOND APPEAL (STAMP) NO.22492 OF 2019

HINDURAO TUKARAM PATIL
(SINCE DECD. THR. LRS)

BALASAHEB HINDURAO PATIL & ORS.

V/S

RANGRAL KSHERTRI PATIL & ORS

....Appellants/Applicants

....Respondents

...

Mr. Bhushan Walimbe for the Appellants/Applicants.

Mr. Umesh R. Mankapure for Respondent Nos.1a to 1e.

...

CORAM: SANDEEP V. MARNE, J.

DATE : JANUARY 11, 2024.

P.C.:

CIVIL APPLICATION NO.352 OF 2020

1 The Civil Application is filed for condonation of delay of 1 year and 249 days in preferring the Second Appeal. The Civil Application is opposed by Mr. Mankapure, the learned Counsel appearing for Respondent Nos.1a to 1e.

2 Considering the averments made in the Civil Application as well as the limited purpose for which the Second Appeal is being entertained,

I deem it appropriate to condone the delay in filing the Second Appeal. Accordingly, the Civil Application is allowed. Delay in filing the Second Appeal is condoned. The Civil Application is disposed of.

SECOND APPEAL (STAMP) NO.22492 OF 2019

3 This Appeal is filed by the Appellants challenging the judgment and decree dated 22 August 2017 passed by the District Judge-3, Islampur in Regular Civil Appeal No.153 of 2009 rejecting the Appeal and confirming the judgment and decree dated 24 September 2009 passed by the 4th Joint Civil Judge Senior Division, Islampur in Regular Civil Suit No.221 of 2001.

4 Plaintiffs instituted RCS No.221 of 2001 seeking injunction against the Defendants from disturbing their possession of the suit property by creating any road therein. It appears that the Defendants desire creation of a road on common bandh between the lands at Gat No.87/A and Gat No.88. The Trial Court has decreed the suit on 24 September 2009 thereby restraining the Defendants from interfering or obstructing with possession of the Plaintiffs over the suit property and by creating any road therein. When the decree was challenged in Appeal, the Appellate Court, while dismissing the Appeal has given following clarifications:

“30 The defendants have liberty to make an application to the Tahsildar to get declare their right of way through the Sarbandh as per provisions of S.143 of the M.L.R.Code; and if any such application is filed by the defendants, it will be decided on its own merits and the injunction order passed by the learned trial Court will not come in way in the said proceedings, as the Tahsildar has every right to decide the claims in respect of right of way over the boundaries.”

5 Thus though the Appeal is dismissed, liberty is granted to the Defendants to file proceedings under provisions of section 143 of the Maharashtra Land Revenue Code, 1966. It is further clarified that the order passed by the Trial Court will not come in the way of decision of such proceedings on merits. In my view therefore the interest of the Appellants are already protected by way of above clarification by the First Appellate Court. No substantial question of law is involved in the present Appeal. Reiterating the clarifications given by the First Appellate Court, the Second Appeal is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)