

Ganesh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6326 OF 2018

1. Kashinath Anna Jadhav
Deceased through legal heirs
- 1a. Ramesh Kashinath Jadhav
Age: 48 years, Occ: Agriculturist,
- 1b. Bhikubai Kashinath Jadhav
Age: 74 years, Occ: Household
- 1c. Padmavati Mansingh Savant
Age: 44 years, Occ: Household,
All 1a to 1c r/o. Visapur, Tal: Khatav,
District Satara.
- 1d. Surekha Dyandev Waghmale
Age: 40 years, Occ: Household,
R/o. Sayadri Niwas, Mira Road,
District: Thane
Nos. 1a to 1d through Power of Attorney
Holder, Ramesh Kashinath Jadhav
Age: 48 years, Occ: Agriculturist,
r/o. Visapur, Tal. Khatav, District- Satara. ...Petitioners

Versus

1. Vasant Shankar Savant
Age: 69 years, Occ: Agriculturist
2. Rajaram Sitaram Savant
Age: 51 years, Occ: Agriculturist
r/o. Visapur, Tal. Khatav,
District-Satara ...Respondents

**Mr Dhananjayrao D Rananaware, a/w Manjeet Lotankar, for
the Petitioners.**

Mr Sujay Gangal, for Respondent No.1.

**CORAM Kamal Khata, J.
DATED: 5th February 2024**

ORAL JUDGMENT:-

1. Rule. The rule is made returnable forthwith with the consent of the parties, and the Petition is disposed of finally at the admission stage.
2. This Petition under Article 227 of the Constitution of India, seeks to set aside the impugned order dated 1st February 2018 passed by the Learned Civil Judge Junior Division (CJJD)., Vaduj, District – Satara. By the said order, the Learned Judge dismissed the Application for condonation of delay filed by the Petitioners.
3. It is the case of the Petitioners that they are the successors of one Kashinath Anna Jadhav (Original Defendant No.2) in Regular Civil Suit No. 131 of 2006. The suit was filed by Respondent No.1 (Original Plaintiff) for an injunction against the Defendants from disturbing possession of the Plaintiff over the suit property, i.e., land bearing Gat No. 1909 admeasuring 1H, 52R, out of which 21R has a house property bearing No. 1174. The said suit was decreed ex parte by an order dated 25th August 2011 in Regular Civil Suit (RCS) No 131 of 2006 at Exhibit ‘A’ page 15 of the Petition. It is the case of the Petitioners that at that relevant point of time, Petitioner No. 1 was

residing at Mumbai and was a daily wage earner. According to him, his deceased father was illiterate, old-aged, and bedridden when the suit was instituted. In those circumstances, he did not attend the suit, and thus it was decided ex parte. It is the case of the Petitioners that the father died soon after the suit was decreed. The Petitioners allege that they were not aware of the impugned judgment and decree and became aware of the said decree when they received notices in execution proceedings. Thereafter, on 2nd August 2014, the Petitioners obtained certified copies of the judgment and decree and immediately on 15th September 2014 filed Application, namely, Civil Misc. Application (CMA) No.39 of 2014, for condonation of delay and setting aside the ex-parte decree.

4. Upon hearing the both parties, the trial Court came to a conclusion that the Petitioners did not show sufficient cause for condonation of delay for setting aside the ex parte decree and consequently dismissed the CMA No. 39 of 2014 by the impugned order dated 1st February 2018.

5. Mr Rananaware submits that the trial Court failed to consider that the suit was filed with ulterior motives to grab the Petitioners' property. He submitted that in the above-stated circumstances, as more particularly stated in the Petition, the delay should be condoned, and the Petitioners ought to be given an opportunity to prove their case.

6. Mr Gangal, for Respondent No.1, submits that there is no apparent ground mentioned in the Petition, which would entitle the

Petitioners for setting aside the judgment dated 1st February 2018. He pointed out that the impugned judgment has specifically mentioned that the suit was for partition and fixation of boundary. The Petitioners' deceased father was duly served with the summons. He had wilfully remained absent. There is no mention as to why he was not represented nor was it pointed out as to why the Petitioners could not have been asked to attend the matter. It is not the case of the Petitioners that the Petitioners were minors at the relevant point of time. There is no explanation according to the learned counsel as to why for more than three years after the decree there was no application made to set aside the decree. The Court has also recorded that the contention raised by the Petitioners that the father was ill was not substantiated by any medical certificate or any documentary evidence to show that he was sick all through before he expired and thus the contention of the Petitioners not at all substantiated. Neither the death certificate was produced before the Trial Court nor is the date of death mentioned in this Petition. Learned counsel also pointed out that the learned Judge has considered the Affidavit of Evidence that was filed and then had come to a conclusion and thus he considered all the aspects of the Respondents' matter before passing the ex parte decree. In the events set out in the order, the learned Judge has expressed that the Petitioners have not explained the delay as required by statute. Leave aside an explanation for day to day delay.

7. The learned counsel also pointed out that after the suit was decreed, the decree has also been satisfied by partition of the lands and the possession being handed over to the Respondents. He submits, therefore, that the decree having been satisfied, nothing

survives in this Petition. He accordingly submits that the Petition be dismissed.

8. I find merit in the contention of the Respondents. I find no reason as to why the Petitioners in this Petition should be entertained. There is no explanation sought to be given even in the Petition as to what prevented the Petitioners from attending the suit since the time it was served and even after the demise of the father. No particulars of the illness or medical certificate has been produced. Moreover, no death certificate has been produced. A party who does not act with due diligence cannot be granted any reliefs by the Court. The Petitioners have suppressed material facts and are thus not entitled to get any relief. I am therefore inclined to dismiss the Petition.

9. Petition accordingly dismissed.

10. Rule is discharged. No order as to costs.

Digitally
signed by
GANESH
SUBHASH
LOKHANDE
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(Kamal Khata, J)