

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL (ST) NO. 26837 OF 2015**

Vijay Dhondiba Girigosavi ... Appellant
vs.
Anita Kaluram Bharati Gosavi and Ors. ... Respondents

**WITH
CIVIL APPLICATION NO. 684 OF 2019
IN
SECOND APPEAL (ST) NO. 26837 OF 2015**

Baburao Bajrang Lotekar and Ors. ... Applicant
vs.
Anita Kaluram Bharati Gosavi and Ors. ... Respondents
Mr. Vaibhav R. Gaikwad for the Appellant.
Mr. Chandrakant N. Chavan for the Applicant.
Mr. Rahul Kate for Respondent No.1.

CORAM : GAURI GODSE, J.

DATED : 27th JANUARY 2025

ORDER:

1. Heard learned counsel for the appellant.
2. This appeal is preferred by defendant no.1 to challenge the rejection of his application for condonation of delay of three and half years in filing the first appeal.
3. The first appeal was preferred for challenging the partition

decree dated 3rd May 2008. While granting partition decree, the area sold by defendant no.1 in favour of defendant no.4 is directed to be adjusted to the share of defendant no.1. The partition decree was challenged by defendant nos.1 and 2 along with application for condonation of delay. Delay application is rejected.

4. This appeal is preferred only by defendant no.1. The defendant no.2 is deceased and his heirs and legal representatives were added as opponent nos.4 and 6 in the delay condonation application in the first appeal.

5. Learned counsel for the appellant submits that the first appellate Court ought to have taken into consideration that the appellant was entitled for an opportunity to lead evidence in the trial Court. He submits that in view of rejection of the application for condonation of delay, the trial Court's decree is confirmed, which was passed without any evidence on the part of the appellant. He submits that since the appellant's rights have been materially affected, the second appeal would raise substantial questions of law on the ground that the impugned order is passed on a technical ground.

6. I have perused the papers of the second appeal.

7. The application for condonation of delay is filed with vague

reasons stating that two days prior to filing of the application, the appellant learnt about the measurement carried out as per the decree.

8. A perusal of the trial Court's judgment indicates that written statement was filed by the appellant. However, no evidence was led. The first appellate court has recorded that the certified copies of execution application produced on record indicated that notice of execution was served upon the appellant on 3rd August 2009.

9. The defendant no.2, who was also one of the appellants in the first appeal had also appeared in the execution proceedings. Thus, based on the certified copies of the execution proceedings, the first appellate Court disbelieved the appellant's contention that he learnt about the trial Court's decree, only two days prior to filing of the first appeal. Hence for want of any justifiable reasons, the huge delay of three and half years in filing the first appeal was not condoned.

10. Nothing is shown in this appeal to indicate that the appellant was not aware about the trial Court's decree.

11. The reasons recorded by the first appellate court are based on the documentary evidence on record. The present second appeal was filed alongwith an application for condonation of delay.

At the time of condoning delay, this Court had directed the appellant to pay cost of Rs.3,000/- to the respondent. However, till date the said direction is not complied.

12. There is no dispute that the partition decree is already executed. The conduct and the reasons shown for condonation of delay by the present appellant indicates that only to stall the execution proceedings the appeal was filed and kept pending.

13. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

14. In view of dismissal of second appeal, civil application is disposed of as infructuous.

(GAURI GODSE, J.)