Radha Krishna (Dead) through L.Rs. and Another Vs Ram Chandra and Another

Court: Allahabad High Court

Date of Decision: May 21, 2010

Citation: (2010) 5 AWC 4860

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.
Heard learned Counsel for the plaintiffs appellants on delay condonation application and perused the record.

2. The plaintiffs appellants filed Suit No. 201 of 1989 Radha Krishna v. Ram Chandra and Ors. for the relief of permanent injunction restraining

the defendants respondents not to interfere over the disputed wall shown by letters A and G in the plaint map and not to demolish and damage the

same.

3. The suit was contested by the defendants respondents by filing written statement denying the plaint allegations made therein. It was dismissed by

the trial court vide judgment and order dated 27.2.1991.

4. Aggrieved by the aforesaid judgment and order dated 27.2.1991 the plaintiffs appellants filed Civil Appeal No. 10 of 1991 in the court of

District Judge, Farrukhabad, which has also been dismissed by the lower appellate court vide judgment and order dated 29.5.2009.

5. This second appeal has been filed by the appellants challenging the concurrent findings of facts given by the courts below.

6. Before considering the matter on merits, the delay condonation application is to be considered. The Stamp Reporter has reported that this

second appeal challenging the judgments and orders of both the courts below has been filed on 19th May, 2010 and is time barred by 100 days,

i.e., the appeal would have been in time upto 12.1.2010.

7. Learned Counsel for the appellants has drawn attention of the Court towards paragraphs 2 and 3 of the affidavit filed in support of the delay

condonation application explaining the delay. Paragraph 3 reads thus:

3. That in the month of January the defendant was suffering from jaundice and he was advised by Doctor to take complete bed rest when he felt

well he came to Allahabad in the 1st week of April and he contacted his counsel and the second appeal is being drafted without any further delay,

the delay caused in filing the second appeal occurred due to above mention circumstances and it was bona fide.

8. Perusal of paragraph 3 aforesaid shows that the defendant suffered from jaundice in the month of January, 2010. Neither any date has been

given nor the averments made in the application are supported by any medical certificate etc. It is apparent from the report of the Stamp Reporter

that this second appeal would have been in time upto 12.1.2010, that is to say that time for filing the appeal has expired in the second week of

January, 2010.

9. Moreover, it appears from paragraph 2 of the affidavit filed in support of the delay condonation application that the appellant came to Allahabad

in the first week of April, 2010 but the appeal has been filed on 19th May, 2010 and that time w.e.f. 1st week of April, 2010 to 19th May, 2010

has not been explained. In my considered opinion, this second appeal suffers from latches. Cause shown is not sufficient. The delay condonation

application in filing the appeal is accordingly rejected on the ground of latches. The second appeal is also dismissed.