

(2017) 03 MP CK 0059

MADHYA PRADESH HIGH COURT

Case No: 781-2014

Dr. Abhishek Goyal

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision: March 7, 2017

Acts Referred:

- Code of Civil Procedure, 1908, Section 100 - Second appeal
- Limitation Act, 1963, Section 5 - Extension of prescribed period in certain cases

Hon'ble Judges: Ashok Kumar Joshi

Bench: Single Bench

Advocate: Bhanupratap Yadav, Shobhna Sharma

Judgement

1. The appellants/original plaintiffs have filed this second appeal under Section 100 of the CPC against the order dated 17.06.2014 passed by the First Additional District Judge, Multai, District Betul, in an unregistered appeal of 2011, dismissing the application filed by the appellants under Section 5 of the Limitation Act for condonation of delay along with the appeal memo against the judgment and decree dated 23.02.2007 passed by the Civil Judge, Class-I, Multai, in Civil Suit No.66A/2005. The above-mentioned Appellate Court has dismissed the application filed by the appellants for condonation of delay along with an appeal as being time barred. The trial Court had dismissed the civil suit filed by the present appellants for declaring their 1/3 share title and possession in relation to disputed lands bearing Survey Nos.150 & 177 of Gram Sunara of Tahsil Multai, District Betul.

2. Appellants have filed appeal memo before the First Appellate Court along with an application under Section 5 of the Limitation Act pleading that after passing of the judgment of the trial Court, he had given fees and vakalatnama to his advocate for filing appeal before the District Court against the judgment and decree of the

above-mentioned trial Court and thereafter he was regularly paying advocate's fee relating to civil appeal and he was being intimated by his counsel that his appeal is pending before the Court. Thereafter, in a pending revenue appeal, appellants were required to file the copy of the appeal memo filed by them before the District Court, then he inquired from his advocate about pending appeal, then his relating advocate did not give any definite information about pendency of the appeal and caused him to wandering for a period of three months for getting copy of the appeal memo. Then appellants contacted an another advocate Shri Alok Soni for receiving of the copy of appeal memo, then for the first time on 15.09.2011, he received information that actually no any appeal has been filed by his previous counsel. Thereafter, he filed application on 23.02.2007 to obtain the certified copy of the judgment and decree. Thus, delay has occurred in filing the appeal, which is bonafide and that should be condoned. An affidavit of appellant No.3 Shrawan was filed in support of above-mentioned application.

3. The above-mentioned application filed under Section 5 of the Limitation Act was opposed by the respondents before the lower Appellate Court on the grounds that the appellant had even not disclosed the name of his previous counsel to whom he had allegedly paid the advocate's fees for filing appeal before the District Court. Actually the alleged revenue appeal was decided by the Appellate Revenue Court on 31.03.2011, thus the fact mentioned that on 15.09.2011, for the first time appellant received information that his previous counsel had not filed any civil appeal before the lower Appellate Court is totally false and unreliable. Thus, it was prayed that the application filed by the appellants for condonation of delay be dismissed and appeal should also be dismissed as being time barred.

4. The First Appellate Court had recorded its finding in impugned order dated 17.06.2014 that the appellant has not even disclosed the name of his previous counsel to whom he had paid fees and instructed for filing appeal before the District Court and the subsequent copying application was filed by the appellant on 19.09.2011 and relating certified copies were received by appellant on 21.09.2011, but thereafter appeal with above-mentioned application was filed on 20.10.2011 and no any explanation was offered by the appellant for the period spent between 21.09.2011 to 20.10.2011. It was observed that appellant remained unsuccessful in establishing any bonafide reason for condonation of abnormal delay of about 4 years 6 months and 25 days and thus, the above-mentioned application was dismissed and appeal was also dismissed as being time barred.

5. The learned counsel for the appellants has relied on the citations of S. Ganesharaju (Dead) through LRs & another Vs. Narasamma (Dead) through LRs & others [(2013)11 SCC 341] and Imrat Lal & others Vs. Land Acquisition Collector & others [(2014)14 SCC 133] and contended that the First Appellate Court had erred in dismissing the application filed by the appellants.

6. The facts of the citations referred by the learned counsel for the appellants and the present case are easily distinguishable. In this case, according to appellants themselves they were aware of the date of judgment and decree passed by the learned trial Court and had paid advocate's fee and instruction to their counsel for filing regular civil appeal before the concerned Appellate Court. But, even the name of the previous counsel who was instructed by the appellant to file civil appeal and paid advocate's fee has not been disclosed in affidavit of the appellant No.3. It is clear that the Appellate Court had considered each relevant fact and circumstance in impugned order and it appears that there is no any perversity in the findings of the above-mentioned Appellate Court's order.

7. In view of above, I am of the considered view that there is no substance or circumstance in the matter giving rise to any question of law rather than substantial question of law. The question of facts raised by the appellants does not call for any interference. Consequently, the appeal fails and is hereby dismissed in limine. No costs.