
(2016) 12 MP CK 0065
In the Madhya Pradesh High Court
Case No : Second Appeal No. 317 of 2014

Haribhan Singh	Vs	APPELLANT
Guddibai		RESPONDENT

Date of Decision : 22-12-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 11, Order 22 Rule 4, Order 22 Rule 9, Section 100
Limitation Act, 1963 — Section 5

Citation : (2017) 1 MPWN 172

Hon'ble Judges : Vivek Agarwal, J.

Bench : Single Bench

Advocate : Shri Sanjay Sharma, Advocate, for the Appellant; Ms. Anjana Singh, Learned Counsel, for the Respondent No. 1, 6 and 7

Final Decision : Dismissed

Judgement

Vivek Agarwal, J.—This case is listed for consideration of I.A. No. 3738/2016, an application under Order 22, Rule 4 , 9 and 11 of C.P.C. so also I.A. No. 4179/2016, an application under Section 5 of the Limitation Act for condonation of delay.

2. First I.A. No. 4179/2016 is considered.

3. It is mentioned that respondent No.2 had died on 31.05.2012 and respondent No.3 had died on 12.06.2012 during the pendency of the First Appeal. First Appeal was decided vide judgment and decree dated 04.07.2014, thereafter, Second Appeal was filed on 29.09.2014 and application under Order 22, Rule 4 , 9 and 11 was filed on 16.08.2016, thereafter, application under Section 5 of the Limitation Act was filed on 12.09.2016.

4. In the application under Section 5 of the Limitation Act and I.A. No.3738/2016, it is mentioned that the appellant gathered knowledge about death of respondents No.2 and 3 when the notices which were sent to those

respondents, were returned back on 16.06.2015 with endorsement that said respondents No.2 and 3 could not be served due to their death. It is further submitted that since case was listed on 13.05.2016, then this endorsement was read and got the knowledge about death of respondents No.2 and 3 long back in the year 2012, therefore, application has been moved for substitution of legal heirs of respondents No.2 and 3.

5. Learned counsel for the respondents submits that the alibi which has been taken by the appellant that the appellant came to know about death of respondents No.2 and 3 only in the year 2016, is factually incorrect. In fact, both the appellant and the defendants No.2 and 3 are close relatives staying in the same village namely- Rud ka Pura, Ambah, District- Morena, and they had knowledge about death of respondents No.2 and 3, but did not made any effort to move any application for substitution of legal heirs of respondents No.2 and 3, therefore, the appeal stood abated against respondents No.2 and 3. It is further submitted that in fact, after death of respondents No.2 and 3, the judgment and decree passed by the First Appellate Court is a nullity against them, as it was passed behind their back after their death.

6. Learned counsel for the respondents has placed reliance on the judgment of the Supreme Court in the case of Lanka Venkateswarlu (D) by LRs v. State of Andhra Pradesh & Others as reported in 2011 AIR (SC) 1199, in which the Supreme Court has held that-

"the concepts such as "liberal approach", "justice oriented approach", "substantial justice", cannot be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay."

7. In the light of this discussion, learned counsel for the respondents submits that the application for condonation of delay is not bona fide and deserves to be rejected and be rejected and therefore, application under Order 22, Rule 4 , 9 and 11 of C.P.C., will go as a natural corollary.

8. There is substance in the argument advanced by learned counsel for the respondents inasmuch as it is apparent from the suit filed by the plaintiff, that names of plaintiffs and the defendants were recorded as joint owners of the suit property in the Government records, this submission in the plaint, which is admitted in the written statement, itself shows that the contention of learned counsel for the respondents that plaintiff and the defendants are related to each other and their names were recorded jointly in the suit property, goes to show that plaintiff/appellant always had knowledge of death of defendants No.2 and 3 and the averments made in the application for condonation of delay so also in the application under Order 22, Rule 4 , 9 and 11, are not bona fide.

9. Learned counsel for the appellant submits that this Court should not adopt hyper-technical approach, but the fact remains that it is not the question of hyper technical approach, but it is the question of bona fides of the appellant and

this Court is required to see that whether the averments made in the application are bona fide or not. When the appellant and the respondents are joint owners of the suit property, then it is difficult to presume that appellant had no knowledge of death of joint owner and co-sharer of the property residing in the same village, therefore, both the applications being devoid of merit and substance, are rejected.