

(2024) 03 OHC CK 0211

In the Orissa High Court

Case No : R.S.A. No.584 Of 2023 & I.A. No.1552 Of 2023

Sashibhusan Mohanty @ Sashibhusan Mahanty

APPELLANT

Vs

Siba Prasad Malla & Others

RESPONDENT

Date of Decision : 22-03-2024

Acts Referred:

Code of Civil Procedure, 1908 — Section 96, 100
Limitation Act, 1963 — Section 5

Citation : (2024) 03 OHC CK 0211

Hon'ble Judges : D.Dash, J

Bench : Single Bench

Advocate : A. K. Mohapatra

Final Decision : Dismissed

Judgement

D.Dash, J

1. The Appellant, by filing the Appeal, under Section 100 of Code of Civil Procedure, 1908 (for short, 'the Code'), has assailed the judgment and preliminary decree dated 17.06.2021 & 02.07.2021 respectively, passed by the learned Additional District Judge, Kujanga in R.F.A. No.55 of 2017.

The father of the Appellant being aggrieved by the Judgment and preliminary decree passed in Title Suit No.61 of 1995 of the Court of the learned Senior Civil Judge, Jagatsinghpur, had carried an Appeal under section 96 of the Code. The father of the Appellant had been arraigned in the suit as the Defendant No.2. The suit had been filed by the Respondent No.1 as the Plaintiff for partition and separate possession of the properties. The father of the Appellant as the Defendant No.2 before the Trial Court although had filed the written statement with the predecessor-in-interest of the Respondent No.2 to 12 (Defendants). He, thereafter did not contest the suit and was set ex parte.

The First Appeal filed by him has been dismissed. The First Appellate Court having passed the judgment on 17.06.2021, the preliminary decree was drawn

on 02.07.2021. The Appellant (son of Defendant No.2) having presented the memorandum of Appeal on 30.12.2023, after delay of 830 days, an application under section 5 of the Limitation Act has been filed seeking condonation of the delay in filing the Appeal.

2. Learned Counsel for the Appellant reiterating the averments taken in the petition submitted that during pendency of the First Appeal, the father of the Appellant suffered from illness and remained confined to bed and, thereafter, in July, 2023, his father expired. He further stated that the Appellant having faced a poisonous snake bite, remained under the treatment from September, 2021 till December, 2023. He also stated that the Appellant having earlier obtained the certified copies of the judgments and preliminary decrees, those in the meantime were destroyed coming under the rain water falling through the thatched roof of his house. In support of the same, he has invited the attention of this Court to the photo copy of his medical certificate annexed to the application.

3. Keeping in view the submissions made, I have carefully gone through the averments taken in the application as also the document annexed thereto.

4. The father of the Appellant having remained ex parte before the Trial Court had challenged the said judgment and preliminary decree passed against him ex parte by carrying the First Appeal. That Appeal stood dismissed by judgment dated 17.06.2021. The present Appeal has been filed after 2 years 3 months and 20 days. The Appellant first of all projects his father's illness till his death in July 2023 and then his own illness from September, 2021 to December, 2023 as the sufficient causes to have prevented his father and thereafter him from filing the Appeal. But then, no such document relating to the illness of his father has been filed although that covers the maximum.

5. The medical certificate concerning the Appellant being gone through, it is seen that the statement made in the application that the Appellant had a snake bite and under treatment from September 2021 till December, 2023 followed by head reeling etc. are either false or what have been stated in the medical certificate are false. It is stated in the medical certificate that he was suffering from rheumatic fever and arthritis and fever which belies the statement as to his facing the snake bite. As already stated when it is said that his father remained ill for a long period, no such supporting document has been filed.

The delay here being for quite a long period i.e. 2 years 3 months and 20 days, the explanations offered in support of sufficient cause to have prevented, the father of the Appellant (Defendant No.2) and this Appellant appear to be wholly unacceptable.

6. It is no doubt true that in case of condonation of delay, the Courts ordinarily take a lenient view in order to see that the litigation is decided on merit and not on technicality, keeping in mind that a litigant approaching the Court late does not benefit in any way but where fact stands that the Appeal being filed after long delay, a valuable right has accrued thereby in favour of the adversary/ies,

the same is not been so likely tinkered with and the Court in that event certainly looks for the plausible explanations so as to constitute sufficient cause. The facts and circumstances narrated above being tested in the touch stone of the settled position of law as aforestated, this Court is not in a position to arrive at a satisfaction as to the existence of sufficient cause for not preferring the Appeal during all these long period.

7. In that view of the matter, the application stands rejected. The I.A. stands dismissed.

8. In view of the order passed in the I.A., the Appeal stands dismissed. No order as to cost.

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