

(2012) 01 RAJ CK 0059

In the Rajasthan High Court

Case No : Civil Writ Petition No. 12224 and 13561 of 2011

Sheoji

APPELLANT

Vs

Badri and Others

RESPONDENT

Date of Decision : 09-01-2012

Acts Referred:

Limitation Act, 1963 — Section 5

Rajasthan Tenancy Act, 1955 — Section 188, 53, 88

Citation : (2012) 01 RAJ CK 0059

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Mr. Mahesh Sharma, for petitioner.

2. Instant petitions have been filed assailing the preliminary decree & final decree passed by the Court of Assistant Collector, Keshoraipatan dt.20.11.1995 & 02.02.1996 which came to be affirmed on the appeals preferred by the petitioner before the Revenue Appellate Authority and Board of Revenue primarily on the premise that the appeals were preferred after more than 11 years by the petitioner who was party to the proceedings and since sufficient cause was not shown by the petitioner in the application seeking condonation of delay filed U/s 5 of the Limitation Act, on its rejection the appeals preferred by the petitioner became incompetent and accordingly rejected.

3. Suit for partition and declaration came to be filed U/s 53, 88 & 188 of the Rajasthan Tenancy Act in which admittedly the petitioner was party to the proceedings and preliminary decree was passed by the Court of Assistant Collector on 20.11.1995 and after affording opportunity to the parties final decree also came to be passed on 02.02.1996 and admittedly appeals were preferred by the petitioner after almost more than 11 years before the revenue appellate authority along with application seeking condonation of delay U/s 5 of the Limitation Act and the only reason disclosed in the application seeking

condonation of delay was that he was not aware of the preliminary & final decree being passed by the revenue courts despite the fact that he was party to the proceedings and presumption would be drawn of being aware of the preliminary & final decree being passed by the learned revenue court and since it was not considered to be reasonable explanation the application filed by the petitioner U/s 5 of the Limitation Act came to be rejected vide order dt.10.06.2008, as a consequence whereof the appeals preferred by the petitioner became incompetent and accordingly rejected and the second appeal preferred before the Board of Revenue against the two orders separately, the Board of Revenue also affirmed the order of Revenue Appellate Authority while rejecting the appeals preferred by common order dt.03.05.2010.

4. The main thrust of submission of counsel is that the procedure adopted by the authority while passing the preliminary & final decree was dehors the provisions of CPC and in absence of issues being framed & parties are granted liberty to adduce evidence preliminary decree could not have been passed since the trial itself did not commence and in such circumstances passing of preliminary decree dt.20.11.1995 & final decree thereafter dt.02.02.1996 are void ab initio bad and that being so the delay would not come in way of the petitioner to deprive his right of assailing the decree which prejudiced the right of the petitioner and in support of submission counsel placed reliance upon the judgment in Vidyabai & Ors. Vs. Padmalatha & Anr. AIR 2009 Supreme Court 1433 and Alka Gupta Vs. Narender Kumar Gupta,

5. As regards rejection of application seeking condonation of delay U/s 5 of the Limitation Act, counsel placed reliance upon the judgment in N. Balakrishnan Vs. M. Krishnamurthy, and taking assistance thereof submits that if there is some substance on merits delay as such could not come in way of the party to get his legitimate grievance redressed under law.

6. The submissions made by counsel in the opinion of this Court are wholly without substance for the reason that preliminary decree came to be passed by the revenue court after affording opportunity to the parties and if at all the petitioner was aggrieved by the process adopted, liberty was available to question the decree so passed but merely because the procedure contemplated by the petitioner and as alleged under the CPC if not followed the decree passed by the learned revenue court cannot be said to be void and apart from it after the passing of the preliminary decree the petitioner being party to the proceedings opportunity was available to raise objection when the final decree came to be passed by the learned revenue court on 02.02.1996 and if at all at this stage also was aggrieved, remedy was available with him but he did not chose to prefer appeal against either preliminary or final decree passed by the learned revenue court on 20.11.1995 and 02.02.1996 respectively within the period of limitation provided under law. However, the appeal came to be filed by the petitioner after almost 11 years thereafter and once he had participated in the proceedings presumption can be drawn that he was aware of the decree

passed by the learned revenue court and being satisfied has not taken any further steps and the plea taken while filing appeal after 11 years that it was not in his knowledge despite the fact that he had participated in the proceedings was nothing but a lame excuse and that certainly could not have been considered to be the basis for condoning the delay of 11 years in filing the appeal. The judgments Vidyabai and Others Vs. Padmalatha and Another, & Alka Gupta Vs. Narender Kumar Gupta, on which counsel placed reliance are the cases where the Hon"ble Apex Court examined as to whether trial is said to be commenced and the procedure which ordinarily supposed to be followed in the suit being filed provided under the provisions of CPC has been followed, but since the appeal itself was incompetent there was no occasion available for the learned Revenue Appellate Authority to examine the dispute on merits.

7. So far as the judgment N. Balakrishnan Vs. M. Krishnamurthy, on which reliance has been placed in regard to condonation of delay the Hon"ble Apex Court has observed that if there is sufficient cause shown, the delay should be construed liberally and condonation of delay is a matter of discretion of the Court and can always be considered if there is sufficient cause being shown so as to advance substantial justice. There could not be any dispute so far as the principle laid down by the Hon"ble Apex Court is concerned but in the instant case the petitioner has not come out with sufficient cause of delay in filing of the appeal after more than 11 years and the only justification forwarded by him was that he was not aware of the impugned decree being passed by the learned revenue court, which on the face of it was not acceptable and the law of limitation cannot be given a complete go-bye on such reason being shown and the object of law of limitation and dealing with the application seeking condonation of delay is concerned, Hon"ble the Apex Court in the recent judgment in Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another, has occasion to examine the expression "sufficient cause" employed U/s 5 of the Limitation Act and observed in paras-14-16 ad infra :-

14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated

adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate - Collector, Land Acquisition v. Mst. Katiji, N. Balakrishnan v. M. Krishnamurthy and Vedabai v. Shantaram Baburao Patil.

16. In dealing with the applications for condonation of delay filed on behalf of the State and its agencies/instrumentalities this Court has, while emphasizing that same yardstick should be applied for deciding the applications for condonation of delay filed by private individuals and the State, observed that certain amount of latitude is not impermissible in the latter case because the State represents collective cause of the community and the decisions are taken by the officers/agencies at a slow pace and encumbered process of pushing the files from table to table consumes considerable time causing delay - G. Ramegowda v. Land Acquisition Officer, State of Haryana v. Chandra Mani, State of U.P. v. Harish Chandra, State of Bihar v. Ratan Lal Sahu, State of Nagaland v. Lipok AO and State (NCT of Delhi) v. Ahmed Jaan.

8. In the light of what has been held by Hon^{ble} the Apex Court (supra), on account of the delay caused in filing of the appeal which was not satisfactorily explained by the petitioner, the appeal preferred was incompetent and as such the application U/s 5 of the Limitation Act has rightly been rejected by the court of appeal and this Court also does not find any manifest error being committed by the revenue courts below in passing of the orders impugned which require interference.

9. Consequently, the petitions fail and are hereby dismissed. No costs.