



IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No. 301 of 2019

An appeal under Section 100 Code of Civil Procedure.

Shaikh Rehemtulla@ **Appellant**
Sk. Ramtulla@
Sk. Rehemtula

-Versus-

Huran Bibi and Others **Respondents**

Advocate(s) appeared in this case:-

For Appellant : M/s. S. Dash, S.K. Dwibedi
A.P. Bose, D.J. Sahoo &
S. Pati, Advocates

For Respondents : M/s. N. Lenka, H.K. Mohanta
P.K. Barik, Advocate
(for Respondent No.10)

M/s. A.R. Dash, A. Mohanta &
S. Kar, Advocate
(for R. 1 to 8)

M/s. L. Achari, S. Kanungo &
S. Mohapatra, Advocate
(for respondent No.9)

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
20.08.2025

SASHIKANTA MISHRA, J.

This is an appeal by Defendant No.1 of C.S. No.
486 of 2014 in the Court of learned Additional Senior Civil



Judge, Baripada, which was preliminarily decreed by the trial court. Said judgement and decree being challenged by Defendant No.1 before the 1st Appellate Court, the appeal was dismissed on the ground of limitation.

2. For convenience, the parties are described as per their respective status before the trial Court.

3. The plaintiffs filed the suit for partition of schedule-B and B-1 properties as per the plaint schedule. Their case, briefly stated, is that suit schedule 'B' land stands recorded in the name of the Defendant No.1, Plaintiff No.2 and Defendant No.2, who are sons of Sk. Meheboob. Schedule B-1 land stands recorded in the name of the Defendant No.1, Plaintiff No.2, Defendant No.2, Plaintiff No.3, Plaintiff No.4 and the Plaintiff No.1. The plaintiffs and Defendant Nos. 1 and 2 are the members of the family of Sk. Meheboob, who is their common ancestor. Sk. Mehboob died in the year 1981, leaving behind his wife, i.e., Plaintiff No.1, five sons, i.e., Plaintiff Nos. 2 to 4 and Defendant Nos. 1 and 2 and four daughters, i.e. Plaintiff Nos. 5 to 8. In the settlement operation in the year, 1984, the names of the daughters of



Sk. Meheboob were not recorded in Khata No.102. Similarly, in Hal settlement operation in the year 1986, the names of Plaintiff Nos. 1, 3 and 4 and Plaintiff Nos. 5 to 8 were not recorded in Khata No.230. Defendant No.1 was looking after the matter of settlement and deliberately avoided recording of the names of his sisters in the ROR. After death of Sk. Mehebood, due to financial crisis, the family members transferred some land to different persons. The Plaintiff No.1 along with Plaintiff Nos. 2 to 4 and Defendant Nos.1 and 2 sold Ac. 0.05 decimals of land to Defendant No.3. The Plaintiff Nos. 1 to 4 and Defendant No.2 sold out some lands to Defendant No.4 to 6. Defendant No.1 sold some land to Defendant Nos. 7 and 8 behind the back of the Plaintiffs, which are void being without consent of the co-sharers. Having come to know about the same, Plaintiff No.1 called her sons and daughters and suggested for adjustment of the lands sold from their respective shares but Defendant No.1 refused to accede to such request. Hence, the suit for partition.

4. Upon receipt of notice, Defendant Nos. 1 and 2 appeared but did not file any written statement.



Defendant Nos. 5 and 6 were set ex-parte. Defendant No.7 appeared and filed written statement but was subsequently set ex parte. Defendant Nos. 3 and 4 were also set ex parte. Defendant No. 8 filed his written statement challenging the plaint averments by stating that the sale made by Defendant No. 1 to Defendant Nos. 7 and 8 is bonafide and that he is in peaceful possession over his purchased land. Subsequently, he has also transferred some land in favour of Dhabaleswar Sahu and others and delivered possession. Basing on the rival pleadings, the trial court framed the following issues for determination:-

- i) *Whether the suit is maintainable in the eye of law?*
- ii) *Whether the plaintiffs have got any cause of action to file the suit?*
- iii) *Whether the suit is filed within the period of limitation?*
- iv) *Whether the suit is bad for non-joinder of necessary parties?*
- v) *Whether the suit property is liable for partition and if so, what is the quantum of share of the respective parties?*
- vi) *To what other relief/reliefs the plaintiffs are entitled to?"*

5. After appreciating the oral and documentary evidence on record, the trial court found that the Plaintiffs



have a valid cause of action to file the suit and the plea of non-joinder raised by Defendant No.8 is not acceptable. As regards the claim of partition, the trial court held that the ancestral property had not been put to partition by metes and bounds. Further examining the evidence on record, it was held that the sale deeds executed in favour of Defendant Nos. 3 to 8 are valid, which can be adjusted from the share of Plaintiff Nos.1 to 4 and Defendant Nos. 1 and 2. After considering the law of inheritance and succession as applicable to Sunni law, the trial court held that the schedule 'C' to 'C-5' land shall be adjusted from the share of the Plaintiff Nos.1 to 4 and Defendant Nos. 1 and 2. On such findings, the suit was preliminarily decreed by holding that the Plaintiff No.1 alone is entitled to get 1/8th share, Plaintiff Nos. 5 to 8 are entitled to 1/6th share each and Plaintiff Nos.2 to 4 and Defendant Nos. 1 and 2 are entitled to get 1/8th share each over schedule-B and B-1 land. It was further held that schedule-'C' to 'C-5' land is to be adjusted from the share of Plaintiff Nos. 1 to 4 and Defendant Nos. 1 and 2 to the



extent of land transferred by them on the basis of sale deeds vide Exhibits-7 to 12.

6. Being aggrieved, Defendant No.1 preferred appeal before the District Court. The appeal being filed beyond the period of limitation, an application was filed for condonation of delay as per Section-5 of the Limitation Act. The delay was said to be 324 days and was sought to be explained by the Defendant No.1 by citing the ground of his personal illness. Medical certificate was appended to the application for condonation. The 1st Appellate Court however did not accept the ground cited for condonation of delay on the ground of discrepancy therein as also for the fact that the Appellant had appeared and filed objection in the final decree proceeding during the period he was supposedly ill. The application for condonation was thus rejected and the appeal was dismissed being not admitted.

7. Being further aggrieved, Defendant No.1 has preferred the instant appeal, which was admitted on the following substantial question of law:-

“Whether the lower appellate court in the facts and circumstances and on the basis of the



document placed in support of the case of the appellant as to existence of sufficient cause of not filing the first appeal within the period of limitation has erred both on fact and law in rejecting the prayer for condonation of delay of 324 days in filing the First Appeal holding that there was no sufficient cause for the same.”

8. Heard Mr. Sougat Dash, learned counsel for the Defendant No.1-Appellant and Mr. Niranjan Lenka, learned counsel appearing for the contesting respondents.

9. Mr. Dash argues that 1st Appellate Court did not accept the medical certificate only on the technical ground of absence of signature of the patient, which is not tenable for the reason that there is no mandatory requirement that the signature of the patient must be endorsed on the medical certificate. The 1st Appellate Court overlooked the name, designation and the seal affixed by the doctor on the certificate, which was not justified. Mr. Das further argues that it is common knowledge that appearance in a proceeding by a party can be through a counsel and therefore only because an objection was filed on behalf of Defendant No.1 in the final decree proceeding, it cannot be said that he was hale and hearty at the relevant time.



10. Per contra, Mr. Lenka would argue that simply enclosing a medical certificate, which does not reveal any serious illness, Defendant No.1 cannot be said to have exhibited sufficient cause for not filing the appeal earlier. That apart, there is no reason as to why he could not file the appeal earlier even though he had appeared and filed objection in the final decree proceeding.

11. In view of the grounds urged in the memorandum of appeal and the substantial question of law framed, it is evident that the only question that falls for consideration is whether dismissal of the appeal on the ground of limitation by the 1st Appellate Court was correct in the facts and circumstances.

12. Admittedly, the appeal was preferred after 324 days. Said period of delay was sought to be explained by Defendant No.1 by citing the ground of his illness. The 1st Appellate Court has gone through the medical certificate appended to the petition for condonation of delay, which is also available in the lower court record. The disease is mentioned as 'spondylosis'. The patient was advised rest for one year. The certificate was issued on



19.03.2019. Further, the patient was said to be suffering from the ailment since 20.04.2018.

13. After going through the certificate, this Court is also not persuaded to accept the same as the same appears to be too general in nature and does not conclusively suggest that the mobility of patient was affected or that he was actually confined to bed for whole of the period of one year. This Court is surprised to note that despite the professed illness, Defendant No.1 appeared in the final decree proceeding on 20.02.2019 and filed his objection. It has been argued that such appearance and filing of objection was done through a lawyer. Accepting such argument, this Court wonders as to why the appeal could not be preferred through a lawyer. Thus, if the Defendant No.1 was fit to have an objection filed in the final decree proceeding there was no reason as to why he could not have filed the appeal within time.

14. After independently appreciating facts and the materials on record, this Court is not inclined to find any fault with the reasoning adopted by the 1st Appellate



Court to reject the application for condonation of delay and consequently the appeal. The substantial question of law is answered accordingly.

15. In the result, the appeal fails and is therefore, dismissed.

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Sashikanta Mishra,
Judge

*Orissa High Court, Cuttack,
The 20th August, 2025/ B.C. Tudu, Sr.Steno*

Signature Not Verified

Digitally Signed
Signed by: BHIGAL CHANDRA TUDU
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