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IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

SECOND APPEAL No. 30 of 2015

CNR No.: MPHC030013482015

*IMRAT SINGH AND OTHERS**Versus**CHIMNA AND OTHERS*

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Appearance:

Shri Prashant Sharma - Advocate for the appellants.

Shri Navnidhi Parharya - Advocate for respondent No.2.

Shri Veyankatesh Budholiya - Advocate on behalf of Shri Gaurav
Mishra - Advocate for respondents No.4 to 6.

Shri Arman Ali - Advocate for respondent No.7.

Shri Shiraj Quaireshi - Government Advocate for the State.
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Reserved on : 11.09.2026

Delivered on : 01.10.2026
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ORDER

In this second appeal the judgment passed on 12.10.2011 by the Court of Second Civil Judge Class-II Ganj Basoda, District Vidisha in RCS/A 12/2009 and the judgment of Additional District Judge Ganj Basoda, District Vidisha passed on 17.12.2014 in RCA 109A/2014 are assailed whereby the civil suit of appellant was dismissed by the trial Court on the merits of the case, while the first appeal was dismissed for being time barred



by 18 days.

2. It is significant that the civil suit was contested only by defendants No.4 to 7 (they are Sanjay Bhavsar, Pancham Singh, Manoj Singh and Sanjeev respectively) and before the First Appellate Court only Pancham Singh, Manoj and Sanjeev contested the appeal. Here also, respondents No.4 to 6/Sanjay Bhavsar, Pancham Singh and Manoj, and also respondent No.7/Sanjeev have appeared through their respective advocates. Thus, all parties, that contested the civil suit and the first appeal are before this Court.

3. Heard the learned counsel on admission.

4. The civil suit was filed before the Trial Court by the legal heirs of female descendants of Jugri and her son Gorelal by claiming their share in the suit property which, according to them, was ancestral in nature. The Trial Court dismissed the civil suit holding that they could not prove the ancestral nature of the property. The first appeal preferred by the appellants was dismissed without entertaining the merits of the case, simply on the ground of delay of 18 days. Appellants are, therefore, in this second appeal.

5. It has been argued on the question of admission by the learned counsel for appellant that despite showing *bona fide* reasons for the delay caused in filing the first appeal, the Appellate Court dismissed the appeal on technical grounds alone and did not at all consider the merits of the case. It is claimed that approach of the First Appellate Court was pedantic rather than justice-oriented.

6. Having considered the arguments and the impugned judgment of the First Appellate Court, this appeal is admitted on the following question:-



i- Whether the First Appellate Court erred in law in dismissing the first appeal on the ground of limitation?

7. All the contesting parties, being before this Court, have been heard on the legality and the correctness of the judgment of the First Appellate Court, which dismissed the appeal on the technical ground of limitation without touching upon the merits of the case.

8. The First Appellate Court found that the appeal was presented before it with a delay of 18 days and the reasons assigned in the application of Section 5 of Limitation Act for this delay were that Mohar Bai was looking after the proceedings of the case and she was substantially ill between 25.11.2011 to 12.12.2011, for which she could not timely file the appeal. It is claimed that the certified copy of the judgment was although obtained, however, the ill health, Mohar Bai delayed the filing of the appeal. This application was replied by Sanjeev (respondent No.7) and respondent No.5, Pancham along with their counter affidavits.

9. From the record of the First Appellate Court, it is reflected that the parties were given the opportunity of arguments alone and they were never asked by the First Appellate Court to prove their respective contentions on the evidence. The Appellate Court observed in para 11 that no document was placed on record to show the nature of illness of Mohar Bai, who was a young lady of 35 years old only. This Court is of the view that unless an opportunity to prove the ground of illness was provided to the parties, the said ground could not have been rejected on the basis of non-production of documentary or oral evidence. Providing opportunity of evidence was sine-



qua-non before arriving at a conclusion that the appellants have failed to prove the ground of delay.

10. The other reasons assigned for the dismissal of application for condonation of delay was that there were other appellants, besides Mohar Bai, who all were older to her in age and were the male members of the family. Therefore, the Court rejected the concept of their being dependent on Mohar Bai for the purpose of timely filing of the appeal and , therefore, the Court disbelieved this ground as well.

11. The reasoning adopted by the First Appellate Court is not a legally sound proposition for rejecting the application for condonation of delay, which was based on the dependency of all appellants on Mohar Bai to file the appeal. The ground assigned for rejection is a inherently gender-biased assertion by the First Appellate Court that elderly male members of a family cannot be dependent on a younger female member to take the necessary steps in a family litigation. This observation is typically misogynistic and undermines the capability of a female member of the family. There is absolutely no basis on the record of the Appellate Court to justify such reasoning. It appears that the Appellate Court ventured to pass such an unwarranted and skeptic remark solely on the basis of surmises and assumptions,, which cannot be approved under law.

12. Accordingly, the second appeal is allowed, and the matter is remanded to the First Appellate Court with a direction to provide opportunity to the parties to lead evidence, if they so desire, regarding the application of Section 5 of Limitation Act and decide it in terms of the facts



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of the case and the applicable law. It is further directed that if the application is allowed and the delay is condoned, the First Appellate Court shall, after granting a due hearing to the parties, decide the appeal on its merits.

13. Parties are directed to remain present before the First Appellate Court on 15.10.2026.

14. Let the records be immediately sent back along with the copy of this order.

(ANURADHA SHUKLA)
JUDGE

Rashid