

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION NO. 1027/2015 IN
M.C.A. ST. NO.9711/2015 IN S.A. NO.245/2001

Gulab s/o Kacharu Warghat (Dead) thr. LRs. Umesh s/o Guilabrao Warghat
and ors. ..vs.. Premdas Kokane and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. S. S. Dhengale, Advocate for applicant.
Mr. R. D. Wakode, Advocate for non applicant no.1.

CORAM : A. B. CHAUDHARI, J.
DATED : NOVEMBER 20, 2015

Heard.

This is an application for condonation of
delay of 376 days caused in filing review application.

For the reasons stated in paragraphs 2 to 4
of the application, it is allowed. Delay condoned.

Civil Application no.1027/2015 is disposed
of accordingly.

Civil Application Nos.948/2015 and 949/2015

These are the applications for condonation
of delay of 633 days caused in filing application for
setting aside abatement and for setting aside
abatement.

For the reasons stated in the application,
they are allowed.

Delay condoned and abatement is set aside.

Civil Application Nos. 948/2015 and
949/2015 are disposed of accordingly.

Civil Application Nos.950/2015 and 951/2015

These are the applications for condonation of delay of 633 days caused in filing application for bringing legal heirs of deceased non applicant no.3 on record and for bringing legal heirs of non applicant no.3 on record.

For the reasons stated in the application, they are allowed.

Delay condoned and legal heirs of non applicant no.3 are allowed to be taken on record. Necessary amendment be carried out forthwith.

Civil Application Nos.950/2015 and 951/2015 are disposed of accordingly.

Misc. Civil Application (Review) St. No. 9711/2015

Heard learned counsel for the rival parties.

Following are the reasons recorded by this Court in paragraph nos. 6 and 7 while deciding Second Appeal No.245/2001.

6. I have heard Shri Anup Gilda, learned counsel for the appellants who argued his case with usual vehemence at his command. I have heard Shri R.D. Wakode, learned counsel for respondent no.1 as well for the respondent no.1. Perused the impugned judgment and order. Perused the records and the relevant documents. I have

checked up the finding of fact recorded by the lower Appellate Court whether Survey No. 91/3 or Survey No.91/2 was the subject matter of the suit filed by the respondent/original plaintiff. The fact that Exh. 42 is the purchase certificate that was filed by the appellant only and that purchase certificate shows after correction that it was Survey No.91/3 that was purchased and not the purchase certificate of Survey No.91/2 is not in dispute, Mr.Gilda, learned counsel cannot be allowed to rely upon the said correction adverse to the interests of the respondent/plaintiff because it is Mr Gilda's client who had filed on record Exh.42 the purchase certificate before the the learned trial Judge. It is for Mr. Gilda to decipher if at all Mr. Gilda wants to contend that the said certificate was not to be relied upon for 91/3. Having once brought the document on record and got it exhibited, the appellant cannot be allowed to turnaround and say that the Survey Number be read as Survey No.91/2 when the same relates to Survey No. 91/3. I do not think that the lower Appellate Court has committed any error or mistake in reading the said document Exh. 42 purchase certificate.

7. Insofar as the entries regarding Survey Nos. 91/2 and 91/3 are concerned, I have perused all the relevant documents on which reliance has been placed by the lower Appellate Court. A comparison of both the entires, to my mind, clearly shows that Survey No.91/3 stands in the name of appellant and obviously so because he is the tenant and also purchased the same by Exh.42. Therefore, the entires are contemporaneous and must be given due weightage. Insofar as Survey No.91/2 is concerned, it stands in the name of the respondent/plaintiff which clearly shows that the finding of fact based on this documentary evidence recorded by the lower Appellate Court, cannot be faltered. The question whether by Exh. 42 Survey Nos. 91/2 or 91/3 was purchased cannot be decided by filing application u/s. 124 of the Bombay Tenancy & Agricultural Land (Vidarbha Region) Act since the certificate itself is final and conclusive and binding at least on the client of Mr. Gilda.”

There is no error apparent on the face of record. Hence, Misc. Civil Application (Review) St. No. 9711/2015 is rejected. No order as to costs.

JUDGE

kahale