

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

36 CIVIL APPLICATION NO. 6725 OF 2015
IN RAST/1482/2014

MALANNA IRANNA GAVALI AND ORS
VERSUS
PARVATIBAI MALANNA GAVALI AND ORS

Shri. P.B. Rakhunde, Advocate, for applicants.

Smt. Geeta Deshpande, Advocate, for the respondents.

CORAM: T.V. NALAWADE, J.

DATE : 11th MARCH 2016

ORDER:

1) The application is filed for condonation of delay of 150 days caused in filing review application and for review of the decision given by this Court of the Second Appeal No.427 of 2012. Heard both the sides.

2) The suit was filed by the respondents for possession of land Survey No.147/2 on the basis of title. It appears that present applicants, original defendants, took various defences to protect the possession. It appears that one of the defences was that the land was given in

possession by one Kashinath under one document. That document was produced before the trial Court and it appears that witness was examined to prove the execution.

3) As the main grievance is in respect of this document, this Court has seen the document. Though it is titled as agreement, the contents show that Kashinath had virtually sold the property and he had mentioned that to avoid payment of registration fee and other charges such document was made. Thus it was actually intended to be a sale deed made on stamp paper of Rs.10/-. The year of execution of the document is 1998. In view of the provisions of the Stamp Act, stamp duty ought to have been paid. In view of the provision of the Indian Registration Act this document ought to have been registered as possession is shown to be given. Due to this circumstance it was not possible for the trial Court to consider this document in evidence. Examination of the witness for proving execution could not have made much difference.

4) Learned counsel for the applicants submitted that in the first appellate Court he had filed application under Order 41 Rule 27 of the Civil Procedure Code for permission to lead evidence. He had requested to the first appellate Court to give exhibit to this document. The first appellate Court had expressed that this application would be considered at the time of disposal of the appeal itself. The decision given by the first appellate Court shows that the first appellate Court held that such document cannot be read in evidence for any purpose.

5) In view of these circumstances again submission was made in the second appeal and request was made to consider the document and prayer was made to remand the matter to the first appellate Court. This Court has considered the aforesaid submissions made by the learned counsel for the appellants and has dismissed the appeal by holding that no substantial question of law as such is involved in the matter. Thus, the material and the position of law are considered by the first appellate Court and this Court also. There is no possibility of review of the decision given by this Court.

6) The learned counsel for the appellants placed reliance on a case reported as **(2012) 8 SCC 148 (Union of India v. Ibrahim Uddin)** and submitted that discretionary power is with appellate Court to allow to lead additional evidence.

7) Condonation of delay is a matter of discretion and while condoning delay Court is not only expected to see as to whether sufficient cause is shown but whether there is some arguable case in the main matter like review application. The aforesaid discussion shows that there is virtually nothing in the review application. In view of these circumstances this Court holds that discretion cannot be used in favour of the applicants and nothing can be achieved by condoning the delay.

8) In the result, the application stands rejected.

Sd/-
(T.V. NALAWADE, J.)

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