

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

917 CIVIL APPLICATION NO. 6524 OF 2005
IN SA/442/2004

NARAYAN SADASHIV BARDE
VERSUS
TRYMBAK RAMKRUSHNA SINCE DECEASED LRS & ORS

Shri. Sushant Dixit, Advocate, for applicant.

CORAM: T.V. NALAWADE, J.

DATE : 17th JUNE 2016.

ORDER:

1) The application is filed for review of the order made by this Court in Second Appeal No.442/2004. This Court dismissed the second appeal of the present applicant by holding that no substantial question of law as such is involved in the matter. Heard learned counsel for the applicant.

2) It appears that one suit was filed in the year 1951 by present plaintiff against various branches of Barde family for relief of partition and separate possession. His uncle Martand was also party to the said

suit. In that suit compromise took place and the parties to the suit accepted that each member has 1/6th share. Plaintiff filed execution proceeding to get his 1/6th share and he got it. Martand did not prefer to file execution proceeding within prescribed period of 12 years from the date of the decree. He died in the year 1964 and his widow died in the year 1979. His widow did not prefer to file execution proceeding in time. The present applicant filed suit in the year 1985 again for the relief of partition when partition had taken place already under the compromise decree.

3) In view of the compromise decree and the further steps taken, shares were decided and so for every purpose the partition was complete. What was remaining was taking of separate shares in possession by the parties and so execution proceeding ought to have been filed within 12 years by Martand or his widow. That did not happen. Plaintiff now wants to get share of Martand as his heir. Learned counsel made submission that it needs to be presumed that the property remained with the defendant, it remained in joint family and so he is entitled

to file suit as successor of Martand. This proposition is not at all acceptable. The suit is dismissed mainly on the point of limitation. The findings are concurrent. The application is not within the scope of review. The application stands rejected.

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

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