

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

930 CIVIL APPLICATION NO. 4753 OF 2004
IN CA/858/2001

TARASING LAXMAN RATHOD
VERSUS
ANNA DHONDIBA CHILWANT & ORS

Shri. S.P. Sonpawale, Advocate, for applicant.

Respondents - served.

CORAM: T.V. NALAWADE, J.

DATE : 11th MARCH 2016

ORDER:

1) The application is filed for review of the order made by this Court in Civil Application No.858/2001 which was filed for condonation of delay caused in filing second appeal. After hearing the learned counsel for the applicant, original defendant, this Court rejected the application. This Court has given finding that sufficient cause is not shown and discretion cannot be used in favour of the appellant. Present application is filed for review of the said order.

2) Condonation of delay under section 5 of the Indian Limitation Act is discretionary power given to the Court. The Court has refused to use the discretion in favour of the present applicant by holding that no sufficient cause is shown. For the satisfaction of the learned counsel for the applicant, this Court allowed him to argue and to show that there is some arguable case in the main matter.

3) This Court has gone through the judgment of the first appellate Court in which material is discussed. It appears that land Survey No.48 was initially jointly owned by two persons like Dhondiba, predecessor of the plaintiff and other person, predecessor of the defendant. Each of them were having 8 Anna share and this survey number was divided into two parts like Survey No.48/1 (present Gat No.117) and Survey No.48/2. Initially total area of the survey number 48 was 31 acres. After the division in two pot hissas, area around 15 acres was included in each pot hissa. There is revenue record to that effect and there is other record like Khasara pahani patrak of the years 1955-56 to 1957-58 (Exhibits 9 and 10)

showing that the respective owners were in possession of 8 Anna share. It appears that during implementation of the consolidation scheme, some mistake was committed and more area was shown to be owned by the defendants and they were shown to be owner of more than 12 hectares when the plaintiff was shown to be owner of only 3 hectare and some portion. Learned counsel for the applicant submitted that no correction was made in the record of consolidation and so the suit ought not to have been decreed. This submission is not acceptable as the record of consolidation cannot pass the title.

4) The first appellate Court has given the decree on the basis of old record regarding possession of portion of old survey No.48/1 and so the decision is on the basis of the record which was not disputed. The defendants had taken defence that entire survey No.48 was purchased by their father but no sale deed or even copy of sale deed was produced on the record. Thus on one hand there was old record showing title of the plaintiff over 8 Anna share of Survey No.48 and on the other hand, the defence of aforesaid nature was taken by the defendants. In view of

these circumstances, the first appellate Court has given decree of possession on the basis of title. Thus, there is virtually no arguable case in the second appeal. For these reasons this Court holds that it is not possible to review the order made by this Court. Nothing can be achieved by condoning the delay.

5) In the result, the application stands rejected.

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

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