

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

**902 CIVIL APPLICATION NO. 4188 OF 2007
IN
CAST/17493/2006
WITH
CA/9664/2010
IN
CAST/17493/2006**

SURESH TRIMBAK AHER

VERSUS

**GOPINATH PANDHARINATH DHANGARE
& ORS.**

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Mr. A.S.Bajaj h/f Mr. S.J.Gaike,
Advocate for Applicant.

Mrs. M.D.Thube-Mhase, Advocate for R – 5.

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CORAM : T.V.NALAWADE, J.

DATE : 11th AUGUST, 2016

ORAL ORDER :-

. The application is filed for condonation of delay of 59 days caused in filing review application. The applicant wants review of the decision given by this court in S.A. No. 412 of 2006 on 07/06/2006. Heard both sides.

2. The Suit was filed by the sons, daughter and wife of Pandharinath for reliefs of partition and for setting aside the sale deed of portion of 15 R. made by Pandharinath in favour of defendant No. 2/present applicant. The Suit proceeded ex-parte against Pandharinath and present applicant did not file Written Statement and so the Suit was decided only on the basis of the evidence given by the plaintiffs. The findings given by the trial Court are confirmed by the first appellate Court. The 2 courts below have held that the suit property, though was standing in the name of Pandharinath, was purchased from the sale proceeds of the ancestral property and so it was joint Hindu family property of plaintiffs and defendant. As the defendants were not there and the burden of proof of legal necessity was not discharged, the Suit was decreed. This Court dismissed Second Appeal by holding that no substantial question of law as such is involved in the matter. The relevant matter is considered by this Court at para No. 8 onwards.

3. Learned counsel for the applicant submitted that one more Suit was pending between the parties and the wife of Pandharinath gave some admission in that Suit, on the basis of which inference is possible that there was collusion between the plaintiffs and Pandharinath. He submitted that for considering that circumstance, the decision needs to be reviewed. He submitted that even if it is presumed that legal necessity was not proved, there was some share in the property to Pandharinath and so the transaction could have been held to be binding on the share of Pandharinath.

4. The Courts below have held that the transaction is not binding on the plaintiffs as it is not proved that there was legal necessity. Though the contention of the purchaser that Pandharinath could have sold his share, could have been considered, this point was not argued in the District Court and also in this Court by the present applicant. It appears that on some portion of the property which was standing in the name of Pandharinath, the plaintiffs were running hotel. Thus, it can be said that everything was within the knowledge of defendant No. 2/present applicant.

5. Learned counsel for the applicant placed reliance on 2 cases reported as AIR 2013 Supreme Court – 3301 [Kamlesh Verma Vs. Mayawati & Ors.] and 2010 (5) All M.R. - 218 [Ramchandra Chunilal Dagad (Deceased) by his L.Rs. & Anr. Vs. Vasant Bansi Somwanshi & Ors.] and submitted that some new material is now available with the applicant and so review is possible. This Court has considered the aforesaid so called new material. Such material needs to be first confronted to the person who gave evidence in the other matter and then only the Court can consider such material. For doing so, entire matter will be required to be opened again. First Appeal was decided on merits after considering the contentions made by defendant No. 2. This Court holds that review is not possible.

6. To get the condonation of delay, the applicant was required to show to this Court that there was sufficient cause and also there is some arguable case. On sufficient cause, there is no convincing case and this Court holds that

there is no arguable case in the review application and so it is rejected. In view of the above, C.A. No. 9664 of 2010 also stands disposed of.

[T.V.NALAWADE, J.]

KNP/C.A. 4188.2007 in S.A. 412.2006.odt