

Sequeira

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

CIVIL APPLICATION NO. 73 OF 2014

(For condonation of delay)

in

REVIEW PETITION (St.) No. 26375 OF 2013

in

SECOND APPEAL NO. 113 OF 2011

Mr.Kondiba Ganu Kenjale

Since deceased-through legal heirs

1a) Sonubai Kondiba Kenjale (deceased)

1b) Sakhubai @ Sunanda Tanaji Jadhav & ors. ... Appellant.

V/s.

Jagannath Rangrao Kenjale, since

deceased through legal heirs

1a) Anand Jagannath Kenjale & ors. ... Respondents.

Mr.Ramdas Hakepatil i/b Mr.Sanjeev Kadam, for Applicants and
Petitioners in R.P.

Mr.P.B.Gujar, for Respondent No.1 -A, 1-B, 1-D & 1-E.

CORAM : N.M. Jamdar, J.

Friday 15 April, 2016.

P.C. :-

Heard learned counsel for the parties. Perused the reasons given in the Civil Application for condonation of delay. Sufficient cause is made out. The Civil Application is allowed in terms of prayer clause (b). Review Application is taken up forthwith for consideration.

2. By the order under review this Court on 29 August 2011 dismissed the Second Appeal filed by the Appellants. The Suit was filed for partition and separate possession. The court while disposing of the Second Appeal considered the Judgments of both the Courts. At the time of hearing of the Second Appeal the Appellants advanced a submission that the findings were perverse and once there was a prior partition, the Suit has to be treated as one for partial partition and was not maintainable. It was also contended that Suit is barred by limitation and shares allotted by the appellate Court are incorrect.

3. The argument which is sought to be advanced before me today that the Court did not taken into consideration the statement given by the original Defendant before the Authorities is not reflected of having been made before the learned Single Judge when the Second Appeal was disposed of. The learned Single Judge disposed of the Second Appeal considering the limitations under Section 100 of the Code, for assessment of evidence in questions of fact. Once the point was not urged the Appellants cannot seek to reargue the Appeal. The Appellants have remedies in law in respect of the order under Review. No case for review of the order dated 29 August 2011 is made out. Review application is accordingly rejected.

(N.M.Jamdar, J.)