

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

1 CIVIL APPLICATION NO. 14491 OF 2016

IN RAST/30596/2016

WITH CA/3573/2017 IN RAST/30593/2016

WITH CA/4200/2017 IN RAST/30593/2016

WITH CA/4201/2017 IN RAST/30596/2016

PUNDALIK DHANJI KOLI

VERSUS

TUKARAM SHAMU KOLI AND OTHERS

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Advocate for Applicant : Mr. Madhav M. Bhokarikar.

Advocate for Respondent No.1 : Mr. A. J. Patil.

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CORAM : **T. V. NALAWADE, J.**

DATE : 20th August, 2018.

ORDER:

. Some applications are filed for permission to amend the
plaint of R.C.S. No.111 of 1992, which was filed by the Applicant and
some applications are filed for permission to produce more documents
as additional evidence. The applications, which need to be considered
first are the applications filed for condonation of delay and the delay is
caused in filing the review applications. In view of the decision given in
Second Appeal No.767 of 2012, alongwith this appeal other appeal
bearing Second Appeal No.715 of 2013 was also decided by this
Court. This Court has dismissed both the appeals by holding that no

substantial question of law is involved.

2 The learned counsel for Applicant placed reliance on the observations made by this Court and also the Madras High Court in the cases reported as **2015 (3) ALL MR 886**, Nagpur Bench, **(Park View Cooperative Housing Society Ltd. Vs. Union of Indian)** and **AIR 1992 Madras 10, (Nandan Durai Vs. Francis Rattisbonne)**.

These authorities are on the point of power of the Court to review the decision given and the importance of the circumstance which is missed like absence of title document in the past and availability of title document subsequent to the decision of the appeal.

3 Unless the delay caused in filing the review proceeding is condoned, further proceeding cannot be considered. For consideration of delay condonation application, this Court is expected to consider as to whether sufficient cause is made out and as to whether there is some arguable case to the Applicant in the main matter. R.C.S. No.111 of 1992 was filed by the Applicant for relief of possession of agricultural land and relief of declaration of ownership was also claimed. The Applicant lost in the suit. The Courts below have held that the Applicant failed to prove his title over the disputed property

and he also failed to prove that he was in possession of the disputed property in the past.

4 The learned counsel for Applicant has produced some record to show that he has some arguable case and the record includes record like mutation No.556, which was sanctioned in the year 1949. It was submitted that initially, the name of one Smt. Mandi, wife of Sitaram was entered as owner of the property, but as she remarried, the name of her mother-in-law namely Nathabai came to be entered as owner of the property. It is not disputed that the name of Nathabai was carried forward as Inamdar and 'regrant' was also made in her favour. The family tree prepared as per the information of the Plaintiff is produced on record, but that family tree is also not supporting the case of the Plaintiff, present Applicant that the Plaintiff is lineal descendant of Nathabai Koli. One Bapuji was shown as common ancestral and one Totaram was son of Somaji. The Plaintiff has contended that he is from the branch of Somaji, who was son of Bapuji. Nathabai was from the branch of Dadanji. During argument, the learned counsel for Applicant submitted that probably Nathabai was from the branch of Senfaduji and Senfaduji was son of Somaji and in turn, Somaji was son of Bapuji. Such tree is not there as per the record produced by the

Applicant himself.

5 The property came to the widow of Sitaram and then the mother of Sitaram and that happened in the year 1949. That entry was never challenged. As there was the Act like Rights of Hindu Woman to property way before 1949 and as the present Applicant is not shown as lineal descendant of Nathabai, there was no question of consideration of rights of Applicant as lineal descendant. Being Plaintiff, it was necessary for the present Applicant to prove that he was lineal descendant of the original owner and so he got share in the property. Further, there is no record to show that the property had come to other persons and not to Sitaram as *Inam* property. Thus, the record, which the Applicant wants to produce cannot help the Applicant to prove anything. Thus, there is no arguable case in the main matter on the basis of the record, which is now made available by the Applicant. Thus, nothing can be achieved if opportunity is given to make amendment in the plaint after allowing the review application. As there is no case on merit in the review itself, there is no question of condonation of delay caused in filing the review application. So, the applications filed for condonation of delay itself stand rejected and other applications stand disposed of.

6 The learned counsel for Respondent requested for imposing costs. That prayer is also rejected.

[T. V. NALAWADE, J.]

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