

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CIVIL APPLICATION (CAO) NO. 1188 OF 2019
IN
MISC. CIVIL APPLICATION (REVIEW) NO.10451 OF 2019
IN
SECOND APPEAL NO.173 OF 2018

(Sou. Nirmala Bhaurao Nagrale ..vs.. Smt. Parvatabai Charandas Devaikar and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.P. Joshi, Counsel for the applicant.

CORAM : ROHIT B. DEO, J.
DATED : 24-06-2019

This is an application seeking condonation of delay in preferring review application of the judgment dated 20-12-2018 in Second Appeal 173/2018.

2. In order to ascertain whether a case for review is made out, I have heard the learned Counsel Shri R.P. Joshi for the applicant on merits.

3. The submission of the learned Counsel Shri R.P. Joshi is that the finding recorded by the learned trial Court, the first appellate Court and this Court that Sitaram-the father of the plaintiff and the defendant died after 1956, is contrary to record. He would invite my attention to document Exhibit 35 to buttress the said submission.

4. The plaintiff has consistently pleaded that her father Sitaram died after 1956. This averment is not denied in the written statement and it is indeed admitted that Sitaram died approximately 47 years ago which would mean, considering the time line of the pleading, after 1956. Moreover, in the cross-examination of the defendant, she has admitted that her father Sitaram died in 1956-57.

5. In any event, even if Sitaram died prior to the coming into force the Hindu Succession Act, it would be of no assistance to the review petitioner.

6. The case of the review petitioner is that her mother Raibai was given the property (gifted) by Sitaram and thereafter Raibai was entitled to execute sale-deed in her favour. Be it noted, that the Courts have recorded concurrent finding that this sale-deed is not proved. One of the finding is that even the payment of the consideration is not proved. This concurrent finding is confirmed in second appeal.

7. Shri R.P. Joshi would submit that even the finding, albeit concurrently recorded by the three Courts, that the sale-deed is invalid and confers no title, is unsustainable and contrary to the enunciation of law by the Hon'ble Supreme Court.

8. I am not inclined to reconsider the findings recorded in review jurisdiction.

9. I do not see any apparent error on the face of the record which can be corrected in review jurisdiction. The application for condonation of delay and the application for review are both dismissed.

JUDGE

adgokar