

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

**CIVIL APPLICATION NO.2606 OF 2019
IN
FIRST APPEAL NO.2545 OF 2005**

Dattatray @ Dattoba Raghu Jagdale (since deceased)
through his legal heirs

1A. Laxmibai Dattoba Jagdale & Ors. .. Applicants

In the matter between

Shantilal Amarchand Chordia (since deceased)
through his legal heirs

1A. Shantabai S. Chordia & Ors. .. Appellants

Vs.

Ashish Shyam Rajure & Ors. .. Respondents

Mr.P.M. Arjunwadkar for the applicants.

Mr.T.D. Deshmukh for the appellants.

CORAM : R.D.DHANUKA, J.

DATE : 14th January 2020

P.C.:

. By this civil application, the applicants seek condonation of delay in filing civil application and seeks recall of the order dated 6th February 2019 passed by this Court disposing of the first appeal in terms of consent terms submitted by the original appellants and the respondent nos.1A to 1G. The applicants herein were the defendant nos.2 and 3 before the trial Court in a suit for specific performance.

2. By judgment and order dated 5th August 2005, the said trial Court decreed the said suit bearing Special Civil Suit No.1386 of

1993 and directed the defendant nos.2 and 3 to execute sale deed in respect of the suit property in favour of the plaintiff.

3. Trial Court also declared that the sale deed dated 11th March 1997 executed by the defendant nos.2 and 3 in favour of the defendant no.5 (appellant in First Appeal No.2545 of 2005) illegal. The applicants (original defendant nos.2 and 3) did not file appeal against the judgment and order dated 5th August 2005. In First Appeal No.2545 of 2005 filed by the original defendant no.5, the plaintiff and the defendant no.5 filed consent terms. Under the said consent terms, it was confirmed by and between those parties that the original defendant no.5 has executed a registered Confirmation Deed dated 25th January 2019 in favour of the plaintiff.

4. It is not in dispute that the sale deed was executed by the defendant nos.2 and 3 in favour of the defendant no.5 and the said transaction was not disputed by the applicants (original defendant nos.2 and 3). In my view, the applicants have thus no locus to apply for setting aside the consent terms in the appeal filed between the plaintiff and the defendant no.5.

5. Civil application is thoroughly misconceived and is accordingly dismissed with costs quantified at Rs.10,000/- to be paid to

the Kirtikar Law Library, Bombay High Court within two weeks from today and shall produce receipt of payment of costs before the Sheristedar of this Court.

R.D.DHANUKA, J.