

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

**REVIEW APPLICATION NO.160 OF 2022
IN
SECOND APPEAL NO.262 OF 2019**

Changdeo Thama Kadam,
Age: 66 years, Occu. Agril.,
R/o. Pimpri Lauki, Azampur,
Tq. Sangamner, Dist. Ahmednagar

... Applicant
(Defendant No.1)

Versus

1. Taibai Yashwant Nikale,
Deceased through L.Rs.
- 1A] Baburao Yashwant Nikale,
Age: 57 years, Occu: Agril.,
R/o. Ambedkarnagar, Rahata,
Tq. Rahata, Dist. Ahmednagar.
- 1B] Shalini Balkrishna Pardhe,
Age: 55 years, Occu. Household,
R/o. Ground Floor, Chandani Building,
Amrutnagar, Mumbra, Dist. Thane
- 1C] Malan Prakash Pagare,
Age 52 years, Occu. Household,
- 1D] Kalawati Babasaheb Shelke,
Age 50 years, Occu. Household,
- Both R/o. Ambedkarnagar, Rahata,
Tq. Rahata, Dist. Ahmednagar.
- 1E] Sushila Pratap @ Pratic Londhe,
Age 47 years, Occu. Household,
R/o. Songaon, Tq. Rahuri,
District Ahmednagar.
2. Raju Thama Kadam @ Raju Revaba Kadam,
Deceased through L.Rs.
- 2A] Kavita d/o. Rajendra Kadam,
Age 17 years, Occu. Education,
- 2B] Babalu Rajendra Kadam,
Age: 16 years, Occu. Education,

2C] Shubhangi Rajendra Kadam,
Age 15 years, Occu. Education,

2D] Alka Rajendra Kadam,
Age: 40 years, Occu. Household,
Respondent Nos. 2A to 2C
are through their minor i.e. mother
of respondent No. 2-D.
The respondent No.2-D is deaf and dumb
Through her next friend i.e. father
Radhakisan Kushaba Jadhav,
Age 70 years, Occu. : Agril.,
R/o. Velhale, Tq. Sangamner,
Dist. Ahmednagar.

... Respondents
(Org. Plffs. L.Rs. & Org. Defts.)

...
Mr. V. S. Bedre, Advocate for the applicant

CORAM : MANGESH S. PATIL, J.

DATE : 06.09.2022

ORDER :

Heard the learned advocate Mr. Bedre. The applicant is the original defendant who had preferred the Second Appeal being aggrieved and dissatisfied by the judgment and order passed by the lower appellate court allowing the appeal of the respondents/original plaintiffs' legal representatives and decreeing the suit for declaration of their title to the suit property.

2. The original plaintiff Taibai was the grand-daughter of original ancestor Thama who died in the year 1933 leaving behind two sons Dulba and Kondaji who died in the year 1953 and 1949 respectively. Kondaji was not survived by any heir. Dulba was survived by his wife Harnabai who died in the year year 1959 and Taibai - the original plaintiff. She filed the suit

claiming that the suit property was exclusively owned by her father Dulba. In order to defend the suit the applicant had come up with two stands, viz Harnabai having adopted the defendant No.1 Changdev and that Taibai had executed a deed of relinquishment.

3. By the judgment and order under review, it was demonstrated that the claim regarding adoption was not tenable for want of original deed of adoption in view of the provisions of Section 91 and 92 of the Evidence Act. So far as, the deed of relinquishment is concerned, it was an unregistered document and was not admissible in evidence in view of Section 49 of the Registration Act, 1908.

4. The whole emphasis of learned advocate Mr. Bedre has been on the point that a fair opportunity ought to have been extended to the review applicant to lead appropriate evidence by going before the trial court.

5. I am afraid, even this request was made while the Second Appeal was being argued and it was refuted by specifically observing that no such request was made either before the first appellate court and even there was no such prayer in the memo of the Second Appeal, by relying on the decision in the matter of **Syeda Rahimunnisa Vs. Malan Bi (dead) by Legal Representatives and another; (2016) 10 SCC 315.**

6. Mr. Bedre would then point out that the review applicant has been in possession of the suit property and has even spent from his pocket for raising a construction and it would cause a serious prejudice and injustice to him if the suit is decreed.

7. Again, this Court is not concerned with the consequence of the decree that has been passed. Even that cannot be a ground to undertake a review.
8. No formal defect or substantial error has been pointed out, sufficient enough to enable this Court to undertake the exercise of review.
9. The Review Application is dismissed.

(MANGESH S. PATIL, J.)

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