

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

WRIT PETITION NO. 1676 OF 2014

Ambutai Pandurang Ingawale and Ors. ... Petitioners

Vs.

Bhagwan Govind Ingawale
(since decease through Lrs.) & Ors. ... Respondents

Mr. Ajay Joshi for the petitioner.
Mr. Vishwanath S. Talkute for respondents.

CORAM: ABHAY AHUJA J.

DATE : 21st DECEMBER 2022

PC. :

1. Mr. Joshi, learned counsel for the petitioners seeks leave of this Court to delete respondents no. 6 to 20 as they are not contesting. Leave is granted. Let the amendment be carried out forthwith.

2. By this petition, petitioners are aggrieved that applications for bringing the heirs of deceased - defendant no.5 on record in the original regular civil suit no. 74 of 1994 pending before the Civil Judge, Junior Division, Sangola, were rejected by virtue of rejection of condonation of delay application. The impugned order is quoted as under:-

“Heard. Perused contention of defts raised in say vide exh. 214.

The only reason for delay of 9 yrs shown that plff has no knowledge as to death. Plff admits orally that deceased is her maternal uncle & cousin father in law. In such circumstances, delay of one decade cannot be condoned on such flimsy ground. Appln rejected.”

3. Mr. Joshi, learned counsel for the petitioners would submit that as contained in the genealogical tree at page-17, the petitioners are the grand children of one Bhagawan, who is the real brother of Sambhaji-defendant no.5, whose legal representatives are sought to be brought on record in same suit. Learned counsel would submit that although the deceased-defendant no. 5 is petitioner’s maternal uncle and cousin father in law, that would not suggest that they were aware of the death of defendant no. 5.

4. Mr. Talkute, learned counsel for respondents no. 1 to 4 being original defendants no. 1 to 4 opposes the said submissions stating that being related there would be no question of not knowing about the death of their cousin grand maternal uncle and Civil Judge, Junior Division has rightly rejected the condonation of delay application stating the ground to be flimsy ground.

5. Be that as it may, both the counsel are *ad-idem* that if the impugned order is set aside and the applications remanded back for consideration of the Civil Judge, Junior Division, Sangola, after giving notice to the proposed legal heirs, that would resolve the issue.

6. Having heard the learned counsel and having perused the impugned orders, the imputed orders dated 30th October, 2013 (Exhibits No. 208, 218 and 212) are hereby set aside. Learned Civil Judge, Junior Division, Sangola is directed to hear these applications afresh after issuing notice to the proposed legal heirs of defendant no.5, preferably within a period of three months.

7. Writ petition stands disposed in the above terms.

(ABHAY AHUJA, J.)