(2016) 11 BOM CK 0066

In the Bombay High Court

Case No : Writ Petition No.1817 of 2014

Devidas APPELLANT

Vs

Gangubai RESPONDENT

Date of Decision : 16-11-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Limitation Act, 1963 — Section 5
Maharashtra Tenancy and Agricultural Lands Act, 1948 — Section 111

Citation : (2017) 1 ALLMR 147 : (2017) 1 BomCR(Cri) 23 : (2017) 1 MhLJ 225

Hon'ble Judges : R.K. Deshpande, J.

Bench : Single Bench

Advocate : Shri Vipul Bhise, Advocate, for the Petitioners; Shri Sameer Sohoni, Advocate, for the Respondent No. 1

Final Decision : Allowed

Judgement

R.K. Deshpande, J.(Oral) - Rule, made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties.

2. The challenge in this petition is to the order dated 25.2.2014 passed by the Maharashtra Revenue Tribunal, in Revision No.175/TENB/ 2000, rejecting the application for condonation of delay of 2 years and 8 months caused in filing an application for bringing the names of legal representatives of the original non-applicant Smt. Gangubai Shridhar Kulkarni on record. The order also rejects the application for condonation of delay of 98 days caused in filing an application for bringing the name of the legal representative Umakant, one of the legal representatives of Smt. Gangubai.

3. The petitioners have preferred Revision No.175/TENB/ 2000 under Section 111 of the Maharashtra Tenancy and Agricultural Lands Act, 1958 against the order dated 16-10-1999 passed by the Sub-Divisional Officer, Akot, in Appeal No.TNC107/ Kapsi/10/1998-99 pertaining to field Survey No.21/2 of Mouza Kapsi. The revision was preferred on 10-4-2000 and the sole non-applicant was

Smt. Gangubai. Upon coming to know of the death of Smt. Gangubai, an application for bringing her legal representatives on record was filed on 16-12-2002. Smt. Gangubai expired on 20-1-2000, i.e. even before the revision was filed, and the application for bringing the legal representatives of Smt. Gangubai was not accompanied by an application for condonation of delay caused in filing such application. The Maharashtra Revenue Tribunal was not functioning during the period from 2002 to 2010. Upon receipt of the notice after resumption of the proceedings by the Maharashtra Revenue Tribunal on 5-3-2010, an application was filed for condonation of delay of 2 years and 8 months caused in filing an application for bringing the legal representatives of Smt. Gangubai on record. Pending the decision of the revision, Umakant, one of the legal heirs of Smt. Gangubai, also expired on 5-3-2009 and, therefore, an application was filed for condonation of delay of 98 days in bringing his legal representatives on record on 10-6-2013. The said application has been rejected by the Maharashtra Revenue Tribunal.

4. Smt. Gangubai, the sole non-applicant, died even before the revision was filed on 10.4.2000. Hence, the question of filing an application for bringing her legal representatives on record along with the application for condonation of delay, does not arise. What the applicants were required to do was to file an application under Order I, Rule 10 of the Code of Civil Procedure for joining the legal representatives of Smt. Gangubai as party non-applicants in the revision application filed under Section 111 of the Code as soon as the applicants came to know of the death of Smt. Gangubai. Though the application was styled as an application for bringing the legal representatives of Smt. Gangubai on record, it can be treated as an application under Order I, Rule 10 of the Code for joining the legal representatives of Smt. Gangubai as the party non-applicants in Revision No.175/TENB/ 2000. Such application was filed on 16-12-2002 as soon as the applicants came to know of the death of Smt. Gangubai. The Maharashtra Revenue Tribunal ought to have, therefore, allowed the said application.

5. So far as the legal representatives of Umakant are concerned, there was a delay of 98 days caused in filing an application for bringing his legal representatives on record. After going through the averments made in the application, I am satisfied that sufficient cause is made out to condone the delay of 98 days by imposing the costs, as I do not find lack of bona fides on the part of the applicants.

6. In the result, the petition is allowed. The order dated 25-2-2014 passed by the Maharashtra Revenue Tribunal, Nagpur, in Revision No.175/TENB/ 2000, is hereby quashed and set aside. The petitioners are permitted to join the legal representatives of Smt. Gangubai as party non-applicants in the said revision and also to bring on record the legal representatives of Umakant. Necessary amendment be carried out within a period of two weeks from the date of first appearance of the parties before the Maharashtra Revenue Tribunal. The parties to appear before the Tribunal on 19-12-2016.

7. Rule is made absolute in above terms. No order as to costs.

