

ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION STAMP NO. 20205 OF 2014

Shri Babasaheb Shahaji Patil

.. Petitioner

Vs.

Shri Nagnath Tulshiram Takbhate and another

.. Respondents

Mr..A.B.Tajane, Advocate for the Petitioner.

Mr.S.D.Paithane, Advocate for Respondents.

CORAM : R.G.KETKAR, J.

DATE : 30th JANUARY, 2015

P.C. :

. Heard Mr.A.B.Tajane, learned Counsel for the petitioner and Mr.Paithane, learned Counsel for the respondents at length. Rule. Mr.Paithane waives service. At the request and by consent of the parties, rule is made returnable forthwith and the petition is taken up for final hearing.

2. By this petition under section 114 read with Order 47 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the petitioner has sought review of order dated 06/03/2014 passed by this Court in Second Appeal No. 432 of 1994 with Civil Application No. 1199 of 2010. By that order, Second Appeal was disposed of in terms of consent terms and in view of disposal of the second appeal, Civil Application No. 1199 of 2010 was disposed of as it did not survive.

3. In support of this petition, Mr.Tajane submitted that respondent No.1–Nagnath Tulsiram Takbhate, hereinafter referred to

as Nagnath, instituted Regular Civil Suit No. 90 of 1980 against respondent No.2– Shridhar Sambhaji Mote, hereinafter referred to as Shridhar, for declaration that registered sale deed dated 28/11/1978 executed by him in favour of Shridhar is invalid and ineffective. Nagnath also prayed for decree of perpetual injunction. Shridhar, in turn, instituted Regular Civil Suit No. 91 of 1980 against Nagnath for declaration that he is the owner of land bearing Gat No. 533 admeasuring 92 R situate at Waluj, Taluka-Mohol, Dist.- Solapur (for short 'suit land') and for perpetual injunction. In the alternate, Shridhar prayed for the decree for possession of the suit land. Both the suits were clubbed together and by common judgment and decree dated 30/07/1988, the learned trial Judge dismissed the Regular Civil Suit No. 90 of 1980 instituted by Nagnath and decreed Regular Civil Suit No. 91 of 1980 instituted by Shridhar. It was declared that Shridhar is the owner of the suit land. Nagnath was directed to hand over actual possession of the suit land to Shridhar within 2 months from the date of the decree.

4. Aggrieved by this decision, Nagnath preferred Civil Appeal No. 614 of 1988 against the judgment and decree passed in Regular Civil Suit No. 91 of 1980. He also preferred Civil Appeal No. 623 of 1988 challenging the said decree passed in Regular Civil Suit No. 90 of 1980. Both these appeals were heard together and were disposed of by common judgment and decree dated 02/02/1993. The

learned District Judge allowed the appeals, with the result, Regular Civil Suit No. 90 of 1980 instituted by Nagnath was decreed and Regular Civil Suit No. 91 of 1980 instituted by Shridhar was dismissed.

5. Mr.Tajane submitted that aggrieved by the the decision passed in Civil Appeal No. 614 of 1988 arising from Regular Civil Suit No. 91 of 1980, Shridhar preferred Second Appeal No. 432 of 1994 in this Court. During the pendency of the appeal, Nagnath executed sale deed on 25/01/2010 in favour of the petitioner. Shridhar, therefore, took out Civil Application No. 1199 of 2010 in this Court contending interalia that the petitioner- Babasaheb Shahaji Patil, hereinafter referred to as Babasaheb, had purchased the suit land from Nagnath under sale deed dated 25/01/2010; that Babasaheb is a necessary party in the above second appeal and accordingly, he may be impleaded in the second appeal. On 29/09/2010, that application was heard and notice was issued to the respondents. By order dated 22/12/2010, Civil Application was ordered to be heard along with main appeal.

6. Mr.Tajane submitted that during the pendency of the second appeal, Nagnath and Shridhar settled the dispute and filed consent terms dated 06/03/2014 in the second appeal. By order dated 06/03/2014, the second appeal was disposed of in terms of the consent terms dated 06/03/2014 and the impugned judgments and

decrees were quashed and set aside and in their place, a decree was ordered to be drawn as per the consent terms. Civil Application No. 1199 of 2010 was also disposed of as it did not survive.

7. Mr.Tajane submitted that the Nagnath and Shridhar did not point out to this Court the prayers in the Civil Application as also the order dated 22/12/2010 passed by this Court. Had this fact been brought to the notice of the Court, the Court would not have disposed of second appeal in terms of the consent terms. He further submitted that Nagnath had instituted Special Civil Suit No. 323 of 2010 for cancellation of sale deed dated 25/01/2010. The said suit was renumbered as Regular Civil Suit No. 89 of 2012 and the same is pending even today. He submitted that pending that suit, application for interim relief at Exhibit 5 was taken out. That application was rejected and the appeal preferred against that order was also dismissed. He submitted that even pendency of the suit instituted by Nagnath against Babasaheb was not brought to the notice of the Court. He submitted that by virtue of disposal of the second appeal in terms of the consent terms, the rights of Babasaheb are adversely affected. He submitted that in Regular Civil Suit No. 89 of 2012, Nagnath informed the Court on 14/07/2014 about passing of the order by this Court in the second appeal. At that time, Babasaheb acquired knowledge about passing of the order. It is in these circumstances, present review petition is filed seeking review of order

dated 06/03/2014. Mr.Tajane relied upon the decision of the Apex Court in the case of *Ramchandra Singh Vs.Savitri Devi* (2003) 8 Supreme Court Cases 319 to contend that review petition filed by third party challenging the consent order is maintainable. The rights of the third party cannot be set at naught by a consent order. For all these reasons, he submitted that review petition deserves to be allowed, thereby, recalling order dated 06/03/2014 and restoring the Second Appeal No. 432 of 1994 along with Civil Application No. 1199 of 2010.

8. On the other hand, Mr.Paithane submitted that Shridhar filed Civil Application No. 1199 of 2010 for impleading Babasaheb as party respondent in second appeal. Notice of that application was duly served on Babasaheb. Despite that, he did not enter appearance. In other words, Babasaheb was aware of pendency of the second appeal. Despite that, he did not make any attempt for representing himself. He further submitted that during the pendency of the second appeal, admittedly, Babasaheb purchased the suit land from Nagnath on 25/01/2010. The said transaction is hit by section 52 of the Transfer of Property Act, 1882. He submitted that Babasaheb cannot be considered to be either a necessary party or a proper party to the suit. In support of this submission, he relied upon the decision of the Apex Court in the case of *Sanjay Verma Vs. Manik Roy*, AIR 2007 SC 1332 and in particular, paragraphs 8, 9 & 11 thereof. He submitted

that in the entire review petition, no explanation is given by the petitioner for not appearing in the Civil Application. He, therefore, submitted that petitioner has not made out any case as contemplated under section 114 read with Order 47 of C.P.C. and therefore, review petition deserves to be dismissed.

9. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the suits were filed by Nagnath and Shridhar against each other. Regular Civil Suit No. 90 of 1980 instituted by Nagnath was dismissed and Regular Civil Suit No. 91 of 1980 instituted by Shridhar was decreed by the trial Court. Two appeals were preferred against these decisions by Nagnath. Both the appeals were allowed by the District Court on 02/02/1993. Regular Civil Suit No. 90 of 1980 was decreed and Regular Civil Suit No. 91 of 1980 was dismissed. Shridhar preferred Second Appeal No. 432 of 1994 only against the decision rendered in Civil Appeal No. 614 of 1988 arising out of Regular Civil Suit No. 91 of 1980.

10. It is also evident that during the pendency of the Second Appeal, Babasaheb had purchased the suit land on 25/01/2010 from Nagnath. It is material to note that Nagnath has instituted Regular Civil Suit No. 89 of 2012 challenging the sale deed dated 25/01/2010 executed by him in favour of Babasaheb and the said suit is also pending. During the pendency of the second appeal, Civil Application

No. 1199 of 2010 was taken out for impleadment of Babaheb. By order dated 29/09/2010, notice was issued to Babasaheb. It is evident from record that notice was duly served on Babasaheb. However, despite service, he did not enter appearance. He did not even participate in the proceedings. On 22/12/2010, this Court ordered that application be heard with main appeal.

11. Now, it is also evident that second appeal was disposed of in terms of the consent terms as also Civil Application No. 1199 of 2010 was disposed of as it did not survive. It is apparent that at the time of disposing off second appeal, this Court was not apprised of the reliefs claimed in Civil Application No. 1199 of 2010. Had this fact been brought to the notice of the Court, the Court would have ensured presence of Babasaheb or in any case, would not have disposed of appeal in terms of the consent terms.

12. This Court was also not apprised of pendency of the Regular Civil Suit No. 89 of 2012 filed by Nagnath against Babasaheb. Even assuming that the Court was apprised of reliefs in Civil Application No. 1199 of 2010, still it has to be held that it was mistake on the part of the Court to dispose of the appeal in terms of the consent terms. It is settled position of law that because of mistake committed by the Court, no party should suffer. In view thereof, I am more than satisfied that this is an eminent case for recalling the order dated 06/03/2014. As noted earlier, the property involved is

immovable property admeasuring about 92R. If the order is not recalled, it will adversely affect the rights of the Babasaheb.

13. Mr.Paithane had relied upon the decision of the Apex Court in the case **Sanjay Verma** (*supra*). The question whether Babaseb is a necessary party or not can be examined while deciding Civil Application No. 1199 of 2010. I, therefore, do not find that the reliance placed by Mr.Paithane on the decision of the **Sanjay Verma** (*supra*) advances their case at this stage. In view of the decision of the Apex Court, in the case of **Ramchandra Singh** (*supra*), the rights of the third party can not be set at naught by passing a decree in terms of the consent terms. For all these reasons, the petitioner has made out a case as contemplated under section 114 read with Order 47 of C.P.C. Hence, following order.

- 1) The order dated 06/03/2014 is recalled.
- 2) Second Appeal No. 432 of 1994 is restored along with Civil Application No. 1199 of 2010.
- 3) All the contentions of the parties in Second Appeal No.432 of 1994 and in Civil Application No. 1199 of 2010 on merits are expressly kept open.

14. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)