

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

913 REVIEW APPLICATION (CIVIL) NO. 237 OF 2012
IN SA/1754/2005

RAJENDRA CHANDRAKANT JADHVAR
VERSUS
SHANTABAI CHANDRAKANT JADHAVAR AND ORS

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Advocate for Applicants : Wagh S.S.

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CORAM : T.V. NALAWADE, J.
DATED : 4th August, 2016.

ORDER :

1. The application is filed for review of the judgment and order of this Court delivered in Second Appeal No. 1754/2005 on 3.4.2009. Heard the learned counsel for applicant.

2. Present applicant - Rajendra Jadhavar was defendant No. 3 in Regular Civil Suit No. 74/1989 filed for relief of partition and separate possession. One Madba was common ancestor and he was succeeded by two sons like Bhairu and Ranba. The branch of Ranba, headed by his son Bharat had filed suit for partition against present applicant and others, who are from the branch of Bhairu. The suit summons was served on defendant No. 1 - Vasant Bhairu, son of Bhairu, who can be said as the oldest member of branch of Bhairu and the summons was served on other defendants also. Defendant No. 3 - Rajendra was

minor at that time and his father Chandrakant, other son of Bhairu was not alive and so, the mother of Rajendra was shown as guardian. The mother of Rajendra was also made party defendant as she had share in the share of Chandrakant. Other sons of Bhairu were made party defendants like defendant Nos. 2 and 7. Thus, all the defendants were served of suit summons. Defendant Nos. 1, 2, 4, 6 and 7 appeared in the suit and they included mother of present applicant namely Smt. Shantabai. They did not file written statement. As the mother did not turn up to Court to contest the suit, the Court appointed Officer of the Court as Guardian of the present applicant - Rajendra. The suit was then decided on the basis of evidence given only by plaintiff. As there were two branches, 1/2 share is given to the plaintiffs. This decision was challenged in First Appeal No. 137/2000 in District Court by Shantabai and by Rajendra. On merits, this appeal came to be dismissed. The finding is given that the suit property Gat No. 183 is the ancestral and joint family property of the parties. It was mainly argued before the District Court that 50% of the property was purchased by Chandrakant and so, that property could not have been considered for partition. The revenue record was considered and the circumstances that the lands purchased on two instances which were parts of same survey number were

consolidated during implementation of consolidation scheme and one Gat number viz. Gat No. 183 was given to this land and the names of both the branches were entered as the owners, are considered by the District Court.

3. In view of the aforesaid circumstances, this Court dismissed the second appeal by holding that no substantial question of law as such was involved in the matter.

4. The learned counsel for applicant - Rajendra submitted that proper procedure was not followed as given in Order 32 of Civil Procedure Code for appointment of guardian of a minor and he was not properly represented and so, the decree is liable to be set aside. This point was never argued before the District Court and also in this Court. The learned counsel placed reliance on the cases reported as **AIR 1995 SUPREME COURT 1440 [Asharfi Lal Vs. Smt. Koili (Dead) by L.Rs.]**, **AIR 1965 CALCUTTA 572 (Vol. 52, C. 108) (1) [Nirmal Chadra Ray and Ors. Vs. Khandu Ghose and Ors.]** and **(2009) 8 Mh.L.J. (S.C.) 743 [Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs.])**. The facts of these reported cases were different. In the present case, the mother was shown as guardian by the plaintiffs and mother was duly served and she had appeared in the suit. As she did not file written statement and

she did not show interest to defend the matter, the Court appointed Court Officer. He filed written statement of denial. The contention of the appellant which is now made that the Court Officer has not collected necessary information and so, the minor was not properly represented cannot be accepted. The case which could have been put up was considered by the First Appellate Court.

5. The learned counsel for applicant argued on one more circumstance and he submitted that one more property was there, which ought to have been considered in the suit filed for partition, but that property was not included by plaintiffs in the suit. He submitted that the said property was purchased in the name of Bharat and so, the matter can be reopened. This submission is also not acceptable as no written statement was filed in the suit even by uncle of the present applicant and mother of the present applicant and it can be said that they did not want to take such defence. In view of these circumstances, this Court holds that the review of the order made by this Court is not possible. In the result, the application stands rejected.

[T.V. NALAWADE, J.]

ssc/