

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

901 CIVIL APPLICATION NO. 11633 OF 2003
IN SA/516/1996

KASAM MAKHTUM MUJASWAR AND ORS
VERSUS
RASOOL ABDUL MUJAWAR AND ORS

...
Advocate for Applicants : P.P. Dawalkar h/f. C.S. Deshmukh
Advocate for Respondent 2 : Patil Milind M. (Beedkar)
...

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

ORDER :

1. The application is filed for review of the order made by this Court, the other Hon'ble Judge, in Second Appeal No. 516/1996. By the order dated 17.6.2000 after hearing the learned counsel for appellants, this Court held that no substantial question of law as such was involved. The appeal was dismissed before admission. There are concurrent finding of the Courts below on question of fact as to whether suit property, house property No. 21 of the village is part and parcel of Survey No. 4 and this finding has gone against the plaintiff.

2. The learned counsel for applicants submitted that it cannot be presumed that the suit property is part of Survey No. 4 as it is situated within Gavthan area and separate number like house number is given in the record of assessment by the Local

Body. He submitted that in one document like sale deed, the property of plaintiffs was shown on one side of Survey No. 4 and due to this circumstance, inference was possible that the property belongs to plaintiffs. It appears that Cadestral Surveyor was appointed as Court Commissioner and on the basis of his report, the Courts below have held that the suit property is part and parcel of Survey No. 4. Plaintiffs are not claiming ownership on any part of Survey No. 4. Further, there is no record of title in respect of even house property No. 21 in favour of plaintiffs. It is open space and not constructed portion, though house number was given. In view of these circumstances, it was necessary for the plaintiffs to prove the possession for getting the relief of temporary injunction, the relief which was claimed in the suit. No relief of declaration was claimed. In view of these circumstances, this Court holds that there is no need to review the decision given in the past. In the result, the application stands rejected.

[T.V. NALAWADE, J.]

SSC/