

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO. 187 OF 2016  
IN  
WRIT PETITION NO. 3092 OF 2012

LAXMAN SHANKAR MALI  
VERSUS  
NAMDEO TUKARAM JADHAV AND OTHERS

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Advocate for Applicant : Shri D.Y.Nandedkar  
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CORAM : RAVINDRA V. GHUGE, J.  
Dated: September 19, 2016  
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PER COURT :-

1. The applicant seeks review of the judgment dated 8.3.2016, delivered by this Court, by which, Writ Petition No. 3092 of 2012 has been dismissed. The applicant had moved the Honourable Supreme Court by filing Special Leave to Appeal (Civil) No. 15372 of 2016. By order dated 18.7.2016, the Honourable Supreme Court has permitted the applicant to file a Review Petition before this Court and the Special Leave Petition has been disposed off for the said purpose.

2. I have heard the learned Advocate for the applicant, whose submissions can be summarized as under:-

(a) Merely because a list of witnesses is not filed, would not preclude the applicant from leading evidence through witnesses.

(b) The trial Court has rejected application Exhibit 62, filed by the applicant by its order dated 4.10.2011 only on the ground that the list of witnesses is not filed.

(c) The applicant relies upon the following judgments in support of his contention that merely because the list of witnesses is not filed, there cannot be an embargo on producing witnesses:-

- (i) Mange Ram Vs. Brij Mohan [AIR 1983 SC 925],
- (ii) Aswini Kumar Vs. Anukul Chandra [AIR 1950 CAL 326],
- (iii) Das Ram Vs. Charanjit Lal [AIR 1974 P & H 195],
- (iv) Kumar Basant Vs. The State [AIR 1958 Patna 458],
- (v) N.Balraju Vs. G. Vidhyadhar [AIR 2004 AP 516],
- (vi) Gopala Krishna Vs. B. Ramchander [AIR 1973 AP 309],
- (vii) M/s Ram Saroop Vs. Shikhar Chand [AIR 1984 Del.143],
- (viii) Sundaramudi Vs. K. Suryanarayana [AIR 1958 AP 254].

(d) The suit preferred by the applicant is for seeking cancellation of sale deeds and for possession.

(e) The Chairman of the Society is necessary to be examined since he would indicate that the petitioner is still the owner of the suit property, which falls within the Kalpataru Gruha Nirman Sanstha Limited.

(f) The Chairman would be in a position to prove the membership of the applicant in the Society.

(g) The Chairman would also be in a position to prove that the suit land belongs to the applicant.

(h) The above said two points were canvassed before the Honourable Apex Court and the Review Petition is filed since these aspects were not argued before this Court when the judgment dated 8.3.2016 was delivered by this Court.

3. Having considered the submissions of the learned Advocate for the applicant as above, I have gone through the judgments cited.

4. Though the trial Court rejected application Exhibit 62, filed by the applicant / plaintiff seeking summons to the Chairman of the Society, on the ground that he had not filed a list of witnesses, I had ignored these technical objections while deciding the Writ Petition filed by the applicant / plaintiff.

5. There is no dispute that the applicant / plaintiff has executed a sale deed, which has also been registered and by virtue of the said sale deed, the purchaser has been put in possession. The suit filed

by the applicant is for possession and cancellation of the sale deed. This, therefore, indicates that the purchaser to whom the plaintiff has sold the suit land, has already been put in possession. He has been arrayed as defendant No.1 in the suit.

6. The applicant concedes that the Society has not even been made a defendant in the main suit. There are no prayers against the Society. The copy of the plaint, which is placed on record, indicates that neither any allegations have been made against the Society, nor have any prayers been put forth against it. The defendants, who have appeared in the matter before the Trial Court and who had appeared as respondents 3 to 6 in the petition decided by this Court, have admitted that the applicant / plaintiff is the Member of the Society and there is no dispute with regard to his membership.

7. Right, title and interest in an immovable property is required to be proved on the basis of documentary evidence. In the absence of any documentary evidence, such issues cannot be proved by oral evidence. No application / notice has been filed by the applicant / plaintiff before the Trial Court seeking production of documents which can be said to be in the custody of the Society, notwithstanding the fact that the Society has not even been arrayed as a defendant.

8. Considering the above, I do not find any merit in the Review Application. The applicant has failed to point out any error apparent on the face of the order. The Honourable Supreme Court, in the matter of Lily Thomas Vs. Union of India, [AIR 2000 SC 1650], has held in paragraph No.52 and 55 as under:-

*“52. The dictionary meaning of the word “review” the “the act of looking, offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunshinghji, AIR 1970 SC 1273 held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in S. Nagaraj V. State of Karnataka, 1993 Supp(4) SCC 595 held :*

*“ Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the Courts and even the statutes lean strongly in favour of finality of*

*decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest Court indicating the circumstances in which it could rectify its order the Courts culled out such power to avoid abuse of process or miscarriage of justice. In Prithwi Chand Lal Choudhary v. Sukhraj Rai, AIR 1941 FC 1 that Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in Rajunder Narain Rae v. Bijai Govind Singh (1836) 1 Moo PC 117 that an order made by the Court has final and could not be altered.*

*“.....nevertheless, if by misprison in embodying the judgments, by errors have been introduced, these Courts possess, by Common Law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in ..... The House of Lords exercises a similar power or rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through in advertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies. Basis for exercise of the power was stated in the same*

decision as under :

*'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.'*

*Rectification of an order thus stems from the fundamental principle that justice is above all, it is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Art. 137 of the Constitution. Our Constitution makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Art. 137 of the Constitution. And Cl. (c) of Art. 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order 40 had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order 40, Rule 1 of the Supreme Court Rules this Court has the Inherent power to make*

*such orders as may be necessary in the interest in justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.”*

*The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.”*

*“55. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with exercise of power. The review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of co-ordinated jurisdiction of equal strength has to be followed and practiced. However, this Court in exercise of its powers under Art. 136 or Art. 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.”*

9. As such, this Review application stands rejected.

( RAVINDRA V. GHUGE, J. )

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