

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 3 OF 2016
IN
WRIT PETITION NO. 360 OF 2013

Samadhan Namdeo Patil

...Applicant

versus

Sarangdhar Namdeo Patil

...Respondent

.....
Mr. G.V. Wani, advocate for the applicant
Mr. D.M. Shinde, advocate for respondent
.....

CORAM : V. K. JADHAV, J.
DATED : 2ND SEPTEMBER, 2016

PER COURT :-

1. The applicant is seeking review of order dated 1.10.2015 passed by this court in writ petition No.360 of 2013.

2. Brief facts giving rise to the present review application are as follows:-

Being aggrieved by the order dated 21.12.2012 passed by the learned Judge of the trial court below Exh.47 in R.C.S. No.6 of 2011, the respondent original plaintiff had preferred writ petition No. 360 of 2013. The learned Judge of the trial court by allowing application

Exh.47 appointed the Senior Officer of Land Records Office, Erandol as a Court Commissioner with directions to submit measurement report. The present applicant original defendant filed the said application Exh.47 for appointment of Court Commissioner to measure the suit land. The said application was strongly opposed by the present respondent/original plaintiff on the ground that the present applicant-original defendant intends to collect evidence by appointing the Court Commissioner. This Court by order dated 01.10.2015 allowed the writ petition and quashed and set aside the order dated 21.12.2012 passed by the learned C.J.J.D. Erandol below Exh.47 in R.C.S. No.6 of 2011. Hence, this review application.

3. Learned counsel for the applicant submits that dismissal of appeal by the District Superintendent of Land Records, Jalgaon is the sole basis for allowing the writ petition. Inadvertently and through oversight, two documents, which were already on record before the learned trial court could not be pointed out to this Court. The order dated 4.5.2011 passed in the appeal by the District Superintendent of Land Records, Jalgaon would reveal that the said appeal has been dismissed only because the suit in respect of said property is pending and the learned District Superintendent of Land Records has refused to entertain the appeal only on the ground that the Civil Suit is pending before the competent court.

4. Learned counsel for the respondent submits that the writ petition came to be dismissed by this Court with observation that the present applicant original defendant has filed an application Exh.47 before the trial court with ulterior motive to collect evidence through the Court Commissioner. Learned counsel submits that there is no substance in review application and the same is liable to be rejected.

5. I have considered the submissions. There cannot be any dispute with the proposition that the review cannot be treated as an appeal in disguise and the jurisdiction of this Court in review is in very narrow compass.

6. It is a matter of record that the appeal before the District Superintendent of Land Records, Jalgaon came to be dismissed long back. The Taluka Inspector of Land Records, Erandol had measured the suit land in the year 2009 on the basis of an application submitted by the applicant-original defendant and a map is also prepared in terms of said measurement. This Court has observed that there was no reason for the present applicant original defendant to file an application before the court for appointment of Court Commissioner. The writ petition was allowed with observation that the present applicant original defendant has filed an applicant Exh. 47 with an

ulterior motive to collect the evidence through such Court Commissioner. It is not the case that the writ petition came to be allowed solely on the ground that the District Superintendent of Land Records, Jalgaon dismissed the appeal preferred by the present applicant original defendant.

7. In view of the above observations, I find no substance in the review application. Review application is thus liable to be rejected and the same is accordingly rejected. No costs.

(V. K. JADHAV, J.)

rlj/