

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO.50 OF 2016
IN
SECOND APPEAL NO.433/2012**

Vitthalrao S/o. Apparao Dhumal .. **Applicants**
and others

Versus

Sow. Ushabai W/o. Vithalrao Dhumal .. **Respondents**
and others

Mr.Gaurav L. Deshpande, Advocate for the applicants
Mr. B.S.Kudale, Advocate for respondent No. 1
Mr.R.R.Mantri, Advocate for respondent Nos. 2 and 3.

CORAM : A.V.NIRGUDE, J.
DATED : 08.08.2016

P.C. :-

1. This review is sought in the judgment and order dated 29.11.2013 passed by me in Second Appeal No.433 of 2012. The facts were as under:-

2. The applicant Vithalrao admittedly has two wives. His first wife is Ushabai who has two children i.e. a son and a daughter. Vithalrao married second time and has a son and a daughter from second wife. The grievance of Ushabai was that she was deserted and Vithalrao went to stay with second wife and neglected her

and her children.

2. Vitthal inherited about 6-Acres land. It is ancestral property. Ushabai and her children then filed a suit for partition and the suit was decreed. Learned Judge of the trial court allotted one share to Ushabai, one share to Ushabai's son and one share to Vithalrao. He ignored Ushabai's daughter, second wife and her children altogether.

3. Vithalrao and his second wife and their children went in First Appeal. By this time a change took place in the law. The daughters are recognized as co-parceners. Learned Judge of the Appellate Court only partly allowed the appeal. The shares were re-defined and Ushabai's sons and daughter were given equal shares. Again this time second wife of Vithalrao and her children were ignored. As against this judgment and order the Second Appeal was filed in this Court and I dismissed it holding that no substantiate question of law arose there. At that time admittedly there was no arguments on behalf of Vithalrao and his second wife and their children that there is now strong possibility of children of second wife getting right to ancestral property also. All along Vithalrao and second wife and children kept coming to the Courts for one cause.

4. Apparently after hearing the submissions of Mr. Deshpande, learned counsel for the applicants, it becomes clear to me now that the case of Vithalrao's children from second wife was altogether different from that of Vithalrao. If they succeed in getting any share in the ancestral property, there is possibility that Vithalrao's share would be reduced. In view of this there is a conflict of interest between Vithalrao on one side and his children from second wife on the other side. Unfortunately this conflict was never noticed by legal advisor of Vithalrao earlier. Even at the time of making submissions on the Second Appeal this aspect was not brought to my notice.

3. Learned counsel for the applicants brought to my notice the judgment of the Supreme Court in the case of Revanasiddappa and another Vs Mallikarjun and others (2011)11 SCC 1. The Supreme Court is now considering as to whether in the light of Article 39(f) of the Constitution of India, children from the second wife I..e so called illegitimate; deserve equal treatment. In the judgment Vithalrao's issue is now referred to larger bench of the Supreme Court and the same is still pending. In the meantime even if this issue is raised and is pending, it is of no use to the parties to the appeal

because issue is not yet settled. In view of that children of second wife would not be entitled any share in the ancestral property is still prevalent.

4. Therefore the review should fail. I am hopeful that the applicant Nos.3 and 4 would approach Hon'ble Apex Court by making appropriate application. In view of this the review application stands dismissed and disposed of.

5. In view of disposal of the review application the civil application No.4031 of 2016 & Review application No.150 of 2016 do not survive and disposed of accordingly.

[A.V.NIRGUDE, J.]