

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 1 OF 2016

IN

SECOND APPEAL NO. 8 OF 2007

RAMESH VASSUDEV SARMALKAR AND
ANR.,

... Applicants

Versus

VAYSHALI JOTENDRA SARMALKAR AND 5
ORS.,

... Respondents

Ms. A. A. Agni, Senior Advocate with Ms. A. Kamat, Advocate for
the applicants.

Mr. G. Shirodkar, Advocate for the respondents.

Coram:- F. M. REIS, J.

Date:- 22nd January, 2016

P.C.:

Heard Ms. A. Agni, learned Senior Counsel appearing for the
applicants and Mr. G. Shirodkar, learned Counsel appearing for the
respondents.

2. Learned Senior counsel appearing for the applicants has
raised two contentions. The first contention is that there is a
typographical error in recording the year of Judgment of the Trial
Court as 2002 when, in fact, such Judgment is of the year 2004. Mr.
Shirodkar, learned Counsel appearing for the respondents does not
dispute that there is a typographical error in mentioning such year in
the Judgment passed by this Court. Hence, the year "2002"

appearing in paras 4 and 6 of the said Judgment is corrected to the year "2004".

3. With regard to the second contention of the learned Senior Counsel appearing for the applicants that the inquiry in terms of Order 20, Rule 12 of the Code of Civil Procedure, could not be directed taking note of the nature of the proceedings which was subject matter of the above appeal, I find that the claim of the respondents-plaintiffs is that in view of the Judgment passed by the learned Trial Judge in the year 2002 which came to be set aside by the learned Lower Appellate Court in the year 2004, there was some benefit enjoyed by the applicants. Such aspect can be examined under Section 144 C.P.C., read with Order 20, Rule 12 of C.P.C.. These provisions are to be read in the context that any benefits accrued based on the reliefs granted by the Trial Court which has been set aside in appeal has to be restituted in terms of the provisions of Section 144 of C.P.C.. The second contention of the learned Senior Counsel stands, accordingly, rejected.

The application stands, accordingly, disposed of in the above terms. Registry to effect the corrections accordingly.

F. M. REIS, J.

ssm.