

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.4 OF 2016
IN
SECOND APPEAL NO.144 OF 2015

Shri Narayan Posha Patil

.. Petitioner

vs.

Smt.Indu Govind Patil

.. Respondents

Mr.Machhindra A. Patil for the petitioner
Mr.Shivshankar D. Patil for the respondent

CORAM : K. K. TATED, J.
DATE : OCTOBER 19, 2016

PC.:

- 1 Heard the learned counsel for the parties.
- 2 The Review Petition is filed by the defendant to review the order dated 23.10.2015 passed by this court in Second Appeal No.144 of 2015 with Civil Application No.277 of 2015.
- 3 The learned counsel for the petitioner submits that on the date of hearing, by mistake it remained on his part to point out the judgment of the apex court in the matter of ***Prakash & Ors. vs. Phulavati & Ors., 2016 SAR (Civil) pg.81*** which was decided on 16.10.2015. He submits that this court rejected the Review Petitioner's Second Appeal and Civil Application on the basis of full bench judgment of this court in the matter of ***Badranarayan Shankar Bhandari & Ors. vs.***

Omprakash Shankar Bhandari & Ors., 2014(5) BCR 481. He submits that on the basis of the Apex Court judgment in the matter of ***Prakash & Ors. vs. Phulavati & Ors.*** (Supra), petitioner preferred the present Review Petition. He submits that the issue involved in the Second Appeal is already covered by the Apex Court judgment in the matter of ***Prakash & Ors. vs. Phulavati & Ors.*** (Supra). He submits that in the interest of Justice, this Hon'ble Court be pleased to recall / review the order dated 23.10.2015 and allow the Second Appeal as well as Civil Application on its own merits.

4 On the other hand, the learned counsel for the respondent vehemently opposed the present Review Petition. He submits that in view of the order 47 Rule 4(2)(b) of the Code of Civil Procedure, 1908 Review Petition is not maintainable. He further submits that issue involved in the present Second Appeal is fully covered by the full bench judgment of this court in the matter of ***Badranarayan Shankar Bhandari & Ors. vs. Omprakash Shankar Bhandari & Ors.*** (Supra). Hence, there is no substance in the present Review Petition and same is required to be dismissed.

5 I have heard both the sides. It is to be noted that in the present proceedings, respondent plaintiff filed Regular Civil Suit No. 121 of 2010 before the Joint Civil Judge, Junior Division Alibag for partition and separate possession. That Suit was decreed by the Trial Court on 19.3.2011 holding that the respondent plaintiff is entitled 1/3rd share in land bearing Survey No.281/35 Hissa No.9 and Survey No.279/33 Hissa No.7. That order was challenged by the petitioner defendant in Civil Appeal No.106 of 2011. The learned District Judge- 3 Raigad at Alibag by judgment and decree dated 7.11.2013 set aside the judgment

and decree passed by Trial Court in Regular Civil Suit No. 121 of 2010 and held that the respondent plaintiff is entitled $\frac{1}{2}$ share in the suit property. The defendant filed Second Appeal No.144 of 2015 before this court on several grounds. One of the grounds was that the Bhagirathi from whom the plaintiff is claiming the share in the suit property was expired on 6.7.2004. The apex Court in the matter of ***Prakash & Ors. vs. Phulavati & Ors.*** (Supra) held that rights under the amended provision of section are applicable to living daughters of living coparceners as on 9th September, 2005 irrespective of when such daughters are born. Considering the judgment of the Apex Court, I am of the opinion that petitioner has made out a case for allowing this review petition. Hence, following order is passed:

- a) Order passed by this court on 23.10.2015 in Second Appeal No.144 of 2015 and Civil Application No.277 of 2015 is reviewed and recalled.
- b) Second Appeal No.144 of 2015 with Civil Application No.277 of 2015 be heard on its own merits.
- c) Office is directed to place Second Appeal along with Civil Application before regular court for admission on its own merits.
- d) Writ Petition stands disposed of accordingly.
- e) Ad-interim relief granted by this court (Coram: R.G.Ketkar, J.) on 8.4.2015 in Second Appeal No.144 of 2015 with Civil Application No.277 of 2015 be continued till further orders.

JUDGE