IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION (ST) NO.12265 OF 2016
IN
WRIT PETITION NO.4712 OF 2016

Ms. Roshani Sukhraji Bafna ...Petitioner

Versus

Vijay H. Shah and Anr. ...Respondents

....

Ms. Roshani S. Bafna, Petitioner in-person present.
Ms. Yogita Deshmukh, Advocate for Respondents.

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CORAM : R.G.KETKAR,J.
RESERVED ON : 21/06/2016
DATE : 14/07/2016

PC:

1. Heard Ms. Roshni Bafna, the petitioner in-person and Ms. Yogita Deshmukh, learned Counsel for the respondents, at length.

2. By this Petition under Section 114 read with Order 47 of Civil Procedure Code, 1908 (for short, 'C.PC.'), the petitioner has sought review of order dated 7.4.2016 passed by this Court in Writ Petition No.4712 of 2016 as also, has prayed for appreciating the settled laws mentioned in the petition which are judicial notice of adjudicative facts which are admissible in evidence as per Sections 56, 57 of the Indian Evidence Act, 1872.

3. The petitioner has invited my attention to paragraphs 2 to 9 of the review petition as also relied upon following decisions.

(i) Renuka Devi Vs. D. Manoharan, (1998) 2 M.L.J. 245 to contend that as the respondents came to the Court with false case with the aid of false and fraudulent document, they are not entitled to any equity as also any orders in their favour. The Court has also a duty to see that as far as possible, litigation is avoided and multiplicity of proceedings are avoided and when the Court has such power to grant relief, it should not close its eyes on technicalities. The petitioner is entitled to seek direction against the respondents to hand over possession of the suit premises to her.

(ii) Messer Holdings Ltd Vs. Shyam Madanmohan Ruia and Ors, AIR 2016 SC 1948, to contend that this Court should impose exemplary costs on the respondents as a compensation for the loss of judicial time as the respondents who are unscrupulous litigants with money power, have abused the judicial process.

(iii) Century Flour Mills Ltd Vs. S. Suppiah, 1975 45 CC 450: 1975 4 CTR (Mad) 195 (FB), to contend that inherent powers of the High Court under Section 151 of the C.P.C. are wide and are not subject to any limitation. It is the duty of the Court to set the wrong right and not allow the perpetuation of the wrong doing.

(iv) P.Subramani Vs. A. Periyasamy (2013) 6 CTC 166 : (2013) 5 LW 224, to contend that if the Court refuses to act on that grievance, it only means that it abdicates its duty and it also perpetuates the fraud and injustice.

(v) Puran Singh and Ors Vs. State of Punjab and Ors, (1996) 2 Supreme Court Cases 205 and in particular paragraph 11 thereof, to contend that when the Constitution has vested extraordinary powers in the High Court under Articles 226 and 227 to issue any order, writ or direction and the power of superintendence over all Courts and Tribunals throughout the territories in relation to which such High Court is exercising jurisdiction, the Court should be left to adopt procedure which can be held to be not only reasonable but also expeditious.

(vi) Indian Bank Vs. Satyam Fibres (India) Pvt Ltd, (1996) 5 Supreme Court Cases 550 to contend that fraud affects the solemnity, regularity and orderliness of the proceedings of the Court, the Courts have been held to have inherent powers to set aside an order obtained by fraud played on Court. The Court has also the inherent power to set aside the order recording compromise obtained by fraud.

(vii) Mahboob Sahab Vs. Syed Ismail and Ors, AIR 1995 SC 1205, to contend that if a party obtains a decree from the Court by practicing fraud or collusion, he cannot be allowed to say that the matter is res judicata and cannot be reopened. Fraud and deceit defend no man. The judiciary in India also possesses inherent power, specially under Section 151 of C.P.C. to recall its judgment or order if it is obtained by fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud.

(viii) S.P.Chengalvaraya Naidu Vs. Jagannath, (1994) 1 SCC 1 to contend that when a fraud on the Court is committed, the evidence adduced therein was a nullity and fraud avoids all judicial acts, ecclesiastical or temporal. Any decree or order obtained from Court by playing fraud has to be treated as a nullity by every Court, whether superior or inferior.

(ix) United India Insurance Co Ltd Vs. Rajendra Singh and Ors, (2000) 3 Supreme Court Cases 581, to contend that as the petitioner had undergone enormous mental strain and agony for no fault on her, the respondents should be directed to forthwith hand over the possession of the suit property as also compensate the petitioner by paying exemplary costs.

4. On the other hand, Ms. Deshmukh has invited my attention to affidavit in reply on behalf of respondents no.1 and 2. She

submitted that the petitioner herein has released her rights in the suit property by executing a registered Release Deed dated 7.1.2003. The petitioner has released her rights in the suit property in favour of her brother Pankaj Sukharaj Bafna. The said release deed is not cancelled or revoked and is in force till date.

5. In reply, it is contended that the suit, namely Regular Civil Suit No.1 of 2004 instituted by respondent no.1 against father, brother and sister of the petitioner claiming ownership by adverse possession, was decreed on 13.4.2004. While decreeing the suit, the learned trial Judge observed that since the petitioner herein had released her rights, she is not rightly made party to the suit.

6. It is further contended that the petitioner herein had preferred Misc. Application No.19 of 2004 on 31.7.2004 against her brother Mr. Pankaj Bafna and respondent no.1. By that application, the petitioner prayed for setting aside order dated 13.4.2004 passed in R.C.S. No. 1 of 2004. The other parties of R.C.S.No.1 of 2004 were not impleaded in that application. The petitioner thereafter filed application on 6.8.2004 at Exh.6 and admitted that Pankaj Bafna (her brother) and respondent no.1 had decided to give Rs. 10 lakh and 2 BHK flat by way of compensation against the landed property at Manfold, Dahanu and, therefore, she does not desire to proceed with Misc.

Application no.19 of 2004 and sought permission to withdraw unconditionally. On 6.8.2004, the said Misc. Application came to be withdrawn unconditionally and without obtaining leave or liberty to file any fresh proceedings.

7. It is further contended that on 10.2.2014, the petitioner filed Regular Civil Suit No.19 of 2014 (wrongly mentioned as respondent) for setting aside judgment and decree dated 13.4.2004 passed in R.C.S.No. 1 of 2004. Respondent no.1 filed application on 10.4.2014 under Order VII, Rule 11 for rejection of plaint. On 3.5.2014, the learned trial Judge rejected the plaint. In view of Section 2(2) of C.P.C., rejection of plaint amounts to decree. Till date, the petitioner has not filed substantive First Appeal challenging the said order. It is further contended that on 12.2.2015, the petitioner herein has instituted Regular Civil Suit No. 46 of 2015 for setting aside the decree passed on 13.4.2004 in R.C.S. No. 1 of 2004 on the ground that the same is obtained by fraud. The petitioner has also sought restoration of the suit property as also for declaration of her ownership over the suit property, among other reliefs. Except respondent no.1, other defendants in R.C.S. No.1 of 2004 are not made party.

8. Ms. Deshmukh submitted that as the petitioner has executed the registered release deed on 7.1.2003 releasing her rights in the suit property, she has no locus to challenge the

decree passed in Regular Civil Suit No. 1 of 2004. In any case, the petitioner has adopted various proceedings challenging the decree passed in that suit and has failed in her attempts. Apart from that, as Regular Civil suit No.46 of 2015 is instituted by the petitioner for setting aside the decree passed on 13.4.2004 in Regular Civil Suit No. 1 of 2004 on the ground that the same is obtained by fraud and the same is pending. She has taken me through the affidavit in reply filed by respondents no. 1 and 2.

9. Ms. Deshmukh submitted that this Court while disposing of Writ Petition No.4712 of 2016 on 7.4.2016 has considered the prayers made in R.C.S.No.46 of 2015 which is pending as also in the petition and held that the petition was wholly misconceived. She submitted that no case for reviewing the order dated 7.4.2016 is made out.

10. Ms. Bafna submitted that she has filed affidavit in rejoinder dated 15.6.2016 denying the assertions made by respondents no. 1 and 2 in their affidavit in reply. She submitted that for the grounds raised in the review petition, the order dated 7.4.2016 may be recalled and the reliefs prayed in Writ Petition No. 4712 of 2016 may be granted.

11. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also carefully perused the material on record.

12. Ms. Bafna relied upon the decision of Madras High Court in the case of Renuka Devi (supra). In that case, defendant had instituted revision petition before the Madras High Court. Respondent-plaintiff claiming himself to be a tenant under the defendant filed suit on 1.8. 1997 for injunction restraining the defendant from entering into the building. Plaintiff came with the case that the defendant had let out the building to him, by virtue of an affidavit dated 17.7.1997, on his agreeing to pay the monthly rent of Rs.1,500/-. On 1.8.1997, ad-interim injunction was issued till 14.8.1997. Against that order, revision was preferred in the High Court. At the time when the revision was being heard, the High Court noted that the order dated 1.8.1997 was not in force. It was admitted by both the learned counsel that the interim order was already vacated. Plaintiff had filed appeal before the appellate court which was also dismissed. In paragraph 4, the High Court noted that the suit was filed on the basis of rental arrangement dated 17.7.1997 which was in the form of an affidavit sworn by the plaintiff in Rs. 10/- stamp paper. Defendant came with the case that under the guise of the said exparte order of interim injunction, the first floor portion of the premises was forcibly occupied by him along with other persons. The learned trial Judge as well as the appellate court recorded a finding that a document is a created and forged document. Various other circumstances were also taken by the

courts below to come to the conclusion that the case as pleaded by the plaintiff was false, and that was the reason why the Courts below refused to exercise their discretion in his favour. In paragraph 5, the High Court noted that the plaintiff came to the Court with a fraudulent document so as to deprive another person of her property. Even though the injunction application was dismissed, if the plaintiff continues in possession on the basis of the fraudulent document, is not the court impliedly holding him to continue in possession? The Court in such cases will have to be little more active, since such person should not get the benefit out of their own fraud. In my opinion, the said decision is not applicable to the facts of the present case as admittedly R.C.S. No. 46 of 2015 instituted by the petitioner for setting aside the decree passed on 13.4.2004 in R.C.S.No.1 of 2004 on the ground of fraud, is pending. The petitioner has to prove the plea of fraud by leading evidence before the trial Court. In the case of Renukadevi (supra) while dismissing the injunction application, the Courts below recorded a categoric finding that the document dated 17.7.1997 was a created and forged document.

13. Ms Bafna relied upon the decision of Messer Holding Ltd (supra). The Apex Court imposed exemplary costs quantified at Rs. 25,00,000/- to be paid by each of the parties, viz. Goyal Gases Ltd, Messer Griesham GmbH, Ruias as at each and every

interlocutory step of a suit in the name of a “fight for justice” wasted enormous amount of judicial time of two High Courts, (Delhi and Bombay High Court) and Apex Court, most of it was avoidable and could have been well spent on more deserving cases. I do not find that the said decision advances the case of the petitioner herein.

14. Ms. Bafna relied upon the decision in the case of Century Flour Mills Limited (supra). In that case, an Extra Ordinary General Body Meeting of the shareholders of the Century Flour Mills Limited, Madras was fixed for 14.9.1974. The Division Bench, by order dated 12.9.1974, directed that the convening of the General Body Meeting on 14.9.1974 be and was hereby stayed pending further orders on the petition. A certified copy of that order was served at the registered office of the company on 13.9.1974. Nevertheless, the meeting as notified was allowed to take place the next day. Contempt Petition was disposed of upon tendering apology by Managing Directors and another. In paragraph 8 of that report, Full Bench observed that the inherent powers under section 151 of the C.P.C. are wide and are not subject to any limitation. Where in violation of a stay order or injunction against a party something has been done in disobedience, it will be the duty of the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. The inherent power is not only available in such a case but it is

bound to be exercised in that manner in the interest of justice. Even apart from Section 151, as a matter of judicial policy, the Court should guard against itself being stultified in circumstances like this by holding that it is powerless to undo a wrong done in disobedience of the Court's orders. In my opinion, the said decision is also not applicable to the facts of the present case, as plea of fraud is yet to be established in the pending suit.

15. Ms. Bafna relied upon the decision of the Madras High Court in the case of P. Subramani (supra). In that case, respondent had instituted suit in the Small Causes Court at Chennai against revision petitioner before the High Court for eviction. An ex-parte order was passed on 10.2.2004. Respondent filed proceedings for condonation of delay of 125 days in filing an application to set aside the ex-parte order dated 10.2.2004. On 6.10.2004, the learned Rent Controller condoned the delay and allowed the application. Subsequently, the petition filed by the respondent for setting aside ex-parte order was also allowed on 14.10.2004. The original petition filed by the respondent was taken up for final disposal by the Rent Controller. On 28.10.2004, the learned Rent Controller dismissed the petition. After about 9 years from the date of dismissal of the Rent Control original petition on 28.10.2004, the respondent filed execution petition on 6.7.1913 for executing exparte decree dated 10.2.2004 which, as noted earlier, the original petition

itself was dismissed on 28.10.2004. On 2.8.2013 the respondent filed petition for police aid and breaking open the lock. They were allowed and fresh delivery was ordered returnable by 7.8.2013. On the same day, possession was taken by the respondent and after taking possession, the warrant was returned with an endorsement “possession taken”.

16. At that stage, revision petitioner filed a Memo before the executing court on the ground that the execution petition itself was not maintainable as the original petition itself was dismissed on 28.10.2004 after contest and that the execution petition was filed only on the basis of the ex-parte order dated 10.2.2004 which was also set aside subsequently. The learned Rent Controller passed order on 12.8.2013 directing the respondent to re-deliver possession to the revision petitioner within three days. Against that order, the respondent preferred appeal before the Rent Controller Appellate Authority on 13.8.2013 and obtained interim order on the same day. It is against that order, the revision petitioner had instituted Civil Revision Application invoking Article 227 of the Constitution of India. It is in that context, in paragraph 16 learned Single Judge observed that the order passed by the Appellate Authority was, per se, illegal and could not be legally sustained. The learned Single Judge held that the entire proceedings related to delivery of possession were vitiated by fraud. In my opinion, the said decision is also not

applicable to the facts of the present case as the suit instituted by the petitioner is pending for adjudication.

17. Ms. Bafna relied upon the decision in Puran Singh (supra). In that case, during the pendency of the Writ Petition No. 931 of 1966 on 14.3.1975, counsel appearing for Bir Singh who was second respondent informed the Court that the said Bir Singh had died on 9.12.1971 and no application for bringing his legal representative was taken out and the petition was not maintainable in the absence of necessary party. The High Court dismissed the writ petition saying that as Bir Singh had died on 9.12.1971 and no application for bringing the legal representative of the deceased had been made, the writ petition was not maintainable in absence of necessary party. The Letters Patent Appeal was also dismissed. It is in that context in paragraph 11 the Apex Court observed that High Courts under Articles 226 and 227 have been vested with extraordinary power to issue any order, writ or direction and the power of superintendence over all courts and tribunals throughout the territories in relation to which such High Court is exercising jurisdiction. The procedure for exercising such power and jurisdiction have to be traced and found in Articles 226 and 227. No useful purpose will be served by limiting the power of the High Court by procedural provisions contained in C.P.C. On many questions, the provisions and procedures prescribed under the

C.P.C. can be taken up as guide while exercising the powers. The High Court should be left to adopt its own procedure for granting relief to the persons concerned. Even if it is held that Order 22, the C.P.C is not applicable to writ proceedings or writ appeals, it does not mean that the petitioner or the appellant in such writ petition or writ appeal can ignore the death of the respondent if the right to pursue remedy even after death of the respondent survives. After the death of the respondent it is incumbent on the part of the petitioner or the appellant to substitute the heirs of such respondent within a reasonable time. For the purpose of holding as to what shall be a reasonable time, the High Court may take note of the period prescribed under Article 120 of the Limitation Act for substituting the heirs of the deceased defendant or the respondent. There is no question of automatic abatement of the writ petition. Even if an application is filed beyond 90 days of the death of such respondent, the Court can take into consideration the facts and circumstances of a particular case for purpose of condoning the delay in filing the application for substitution of the legal representative. This power has to be exercised on well-known and settled principles in respect of exercise of discretionary power by the High Court. If the High Court is satisfied that delay, if any, in substituting the heirs of the deceased respondent was not intentional, and sufficient cause has been shown for not taking the steps earlier, the High Court can substitute the legal representative and proceed with the hearing of the writ petition or the writ appeal, as the case may be. At the same time, the High Court has to be conscious that after lapse of time a valuable right accrues to the legal representative of the deceased respondent and he should not be compelled to contest a claim which due to the inaction of the petitioner or the appellant has become final. In my opinion, the said decision also does not advance the case of the petitioner.

18. Ms.Bafna relied upon the decision of Indian Bank (supra). In that case, the controversy revolved around letter no. 2775 of 26.8.1991 from complainant before Commission to the Bank and another letter no.2776 of 26.8.1991 from the complainant to the Bank. It was the case of the appellant before the Apex Court that the material instructions regarding co-acceptance of the Bills of Exchange by the French Bank was absent in letter no.2775 whereas it was specifically recorded in letter no.2776. According to the Bank, letter no.2776 dated 26.8.1991 was a forgery created by the complainant for the purpose of the case. In paragraph 18,the Apex Court observed that when the letter dated 26.8.1991 was filed before the Commission and a review of the judgment was sought on the ground that the letter containing the instruction for obtaining co-acceptance of the French bank was never issued to the appellant and that the only

letter issued on that date was the letter in which this instruction was not mentioned, the Commission, instead of deciding the controversy as to whether the other letter relied upon by the respondent was, at all, sent or issued to the appellant, proceeded to decide the controversy on the ground that even if no such letter was issued, the recital in the Bill of Exchange about co-acceptance by the French Bank was enough and the appellant having not acted in terms of the Bill of Exchange and having not obtained the co-acceptance of the French Bank was liable to pay to the respondent the entire price of the goods supplied to the buyer to whom the documents would not have been delivered had it been mentioned that before delivering the documents to the Buyer, co-acceptance by the French Bank was necessary, as in that event, the documents would have been either returned, as was done on previous occasions or the French bank would have given co-acceptance and thus made payment of the entire amount to the respondent. In paragraph 20, the Apex Court observed that the said plea could not have been legally ignored by the Commission which needs to be reminded that the authorities, be they constitutional, statutory or administrative (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as fraud and justice never dwell together. In the present case, the suit instituted by the petitioner for setting aside decree on the ground that the same is obtained by playing fraud is pending. The said decision is not applicable for reasons indicated earlier and, therefore, does not advance the case of the petitioner.

19. Ms. Bafna relied upon the decision in the case of Mahboob Sahab (supra). In that case, Syed Ismail and Ibrahim, sons of Magdoom, Panchamale had instituted suit impleading their parents and appellant/purchaser, for possession of the suit lands and for mesne profits on the ground that their father had executed a gift deed jointly in their favour and their mother Smt. Chandi, who in turn orally gifted over her share to Syed Ismail in April 1958 at the time of her marriage. The appellant pleaded that Maqdoom had entered into an agreement of sale on 12.4.1961 for said 12 acres of land for a valuable consideration and had executed the sale deed dated 12.5.1961 to discharge antecedent debts. Similarly, an agreement of sale of 4 acres of land for Rs.2500/- was executed and the appellant had obtained permission from the Assistant Commissioner on 4.8.1964 for sale thereof. When Maqdoom and Smt. Chandi refused to execute the sale deed, he instituted suit for specific performance which was decreed on contest and the sale deed was executed and registered by the Court. Their parents had not given any gifts which were set up only to defruad the appellant. In the trial Court it was brought on record that in the suit no.3/1/1951 filed

by one Ismail on the foot of a possessory mortgage, the executability of another decree obtained by another creditor was impugned wherein by judgment and decree dated 24.9.1951 the Court held that Maqdoom had jointly gifted the lands to the respondents and their mother by registered gift deed. The said finding was pleaded to operate as res judicata against the appellant. As a preliminary issue, the learned trial Judge held that the decree passed in Suit No. 3/1/1951 filed by Ismail did not operate as res judicata but decreed the suit on merit. In appeal the learned Sessions Judge Gulbarga reversed the decree and dismissed the suit holding that Maqdoom as an owner had alienated the property. Neither the original nor certified copy of the gift deed alleged to have been executed by Maqdoom was filed. The oral gift by the mother to the respondents was false as neither acceptance of the gift nor delivery of possession of the lands either by the father or the mother was proved. Maqdoom was a chronic debtor and to defraud the creditors he set up false plea of gifts in favour of his children and wife. The High Court without disturbing any of the findings of facts recorded by the appellate court, reversed the judgment solely on the finding that the decree passed in O.S.No.3/1/1951 operated as res judicata, as the parents and the respondents are co-defendants in that suit and therefore it would operate as res judicata. Having been divested of his title, Maqdoom had no right to alienate the properties of the minors in favour of the appellant. It is against that order, the matter was carried to Apex Court. In paragraph 4, the Apex Court noted that neither the mother nor the father examined as witness to prove the gifts said to have been given in favour of their minor sons Ismail and Ibrahim Syed Ismail too was not examined as a witness. In paragraph 8, the Apex Court held that for the application of doctrine of res judicata between co-defendants, four conditions must be satisfied, namely that (1) there must be a conflict of interest between the defendants concerned; (2) it must be necessary to decide the conflict in order to give the reliefs which the plaintiff claims; (3) the question between the defendants must have been finally decided; and (4) the co-defendants were necessary or proper parties in the former suit. In my opinion, this decision also does not advance the case of the petitioner.

20. Ms. Bafna also relied upon the decision in the case of S.P.Chengalvaraya Naidu (supra) to contend that fraud avoids all judicial acts, ecclesiastical or temporal. Any decree or order obtained from court by playing fraud has to be treated as a nullity by every Court whether superior or inferior. For the reasons already indicated , I do not find that the said decision advances the case of the petitioner.

21. Ms. Bafna relied upon the decision of the United India

Insurance Co. Ltd (supra). In that case, Rajendra Singh (father) and his son Sanjay Singh had instituted two separate claim petitions before the Motor accident Claims Tribunal , Bulandshahr in 1994 praying for awarding compensation in respect of an accident which happened on 9.12.1993. On 15.1.1998 Awards were made in favour of Rajendra Singh in a sum of Rs. 3,55,000/- and in favour of Sanjay Singh in a sum of Rs. 1,52,000/- together with interest at the rate of 12% per annum from the date of claim. Four months thereafter a gentleman visited the Divisional Office of the appellant company at Ghaziabad and delivered the photocopy of a report prepared by the Assistant Sub Inspector of Police Subzi Mandi Police Station Delhi on 9.11.1993 which contained a narration that Sanjay Singh and Rajendra Singh received the injuries in a different circumstances at a different place altogether (i.e. while they were operating their own tractor, it jutted into a ditch and in the jerk the occupants of the tractor slipped down and sustained injuries). In other words, father and son did not receive injury in respect of an accident that took place on 9.11.1993. The appellant company moved the Tribunal with two petitions purportedly under sections 151,152 and 153 of C.P.C. for recalling the awards. The claimants contended that the Tribunal has no power of review. The Tribunal dismissed the applications for recalling the Awards. The appellant moved the High Court of Allahabad which was also dismissed. It is in that context, the Apex Court observed that the appellant was justified in approaching the Tribunal first and at any rate the High Court ought not to refuse to consider the grievance of the appellant. The allegation made by the appellant that the claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for, the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. The claimants then confined their resistance to the plea that the application for recall is not legally maintainable. In my opinion, the said decision is also not applicable to the facts of the present case.

22. Ms. Bafna also relied upon the decision in the case of Ramrameshwari Devi Vs. Nirmala Devi (2011) 8 Supreme Court 249 where the Apex Court mainly considered the question namely whether the prevailing delay in civil litigation can be curbed? and laid down the steps to be taken by the trial Courts in paragraph 52 while dealing with the civil trials. In my opinion, this decision does not advance the case of the petitioner.

23. Ms. Bafna relied upon the decision in the case of Indar Singh Vs. Nihal Kaur, AIR 1968 P.& H. 495. In that case, the suit instituted by the plaintiff-Indar Singh for a declaration that the

gift deed executed by him and registered on 30.4.1957 regarding his agricultural property and residential house was void and ineffective against the plaintiff's rights of ownership and possession and the gift deed was merely a paper transaction as (1) the gift deed had been got executed fraudulently by taking undue advantage of the mental and physical rendition of the plaintiff, and (ii) the possession of the property had not been delivered to Nihal Kaur (the alleged donee) and the entire proceedings relating to the gift were a mere paper transaction was dismissed on the solitary ground that no suit for such a declaration was maintainable under Section 42 of the Specific Relief Act and that the only suit competent for obtaining the above said relief would be a suit under Section 39 of the Specific Relief Act, 1877 for cancellation of the gift deed. The Division bench set aside the trial Court's judgment and remitted the matter for hearing and disposal on merits. For the reasons already indicated, this judgment also does not advance the case of the petitioner.

24. While dismissing the petition no. 4712 of 2016 on 7.4.2016, I have reproduced the prayers made in the petition as also in R.C.S No.46 of 2015. Prayers made in clauses (A) and (C) in the petition are already made in Regular Civil Suit No.46 of 2015 and it was observed that the said prayers cannot be considered. By prayer clause (B), the petitioner sought suspension of Section 55

of the Maharashtra Land Revenue Code, 1966 which prayer cannot be considered by Single Judge exercising powers and jurisdiction under Article 227. By prayer clause (D), the petitioner sought direction to Dahanu Court for deciding the prayer for awarding mesne profits and reconstruction of the house property in Regular Civil Suit No.46 of 2015 within 4 months. The said prayer is already made in the suit and, therefore, the petitioner is at liberty to make prayer to that effect in the pending suit. Apart from that, the petitioner has approached this Court in the year 2016 for setting aside the decree dated 13.4.2004 passed in R.C.S. No.1 of 2004. As the petitioner invoked the writ jurisdiction of this Court under Article 227, nearly after twelve years, that was also one of the grounds for declining to exercise powers under Article 227 of the Constitution of India.

After considering the submissions advanced by the parties, I do not find any case is made out for reviewing the order dated 7.4.2016. In the case of Kamlesh Verma Vs. Mayawati, AIR 2013 Supreme Court 3301, it is observed by the Apex Court as under :

> "The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected,

> but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. "

Hence, Review Petition is dismissed as it is wholly misconceived.

In the circumstances, there shall be no order as to costs.

(R.G.Ketkar,J.)