

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Review Petition (ST) NO.16429 OF 2016

IN

Civil Revision Application NO. 328 OF 2007

Krishnabai Pandurang Nalavade
and another

...Petitioners

Versus

Santosh Balkrishna Junjunwala

...Respondent

....

Mr.R.S. Apte, Senior Counsel i/b. G.H. Keluskar, Advocate for the
Petitioners.

Mr. Bhushan Walimbe, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 12th August, 2016

P.C.

1. Not on board. At the request of Mr. Apte, taken up for admission.
2. Heard Mr. R.S. Apte, learned Senior Counsel for the petitioners and Mr.Bhushan Walimbe, learned Counsel for the respondent, at length.
3. By this Petition under Section 114 read with Order XLVII Rule 1 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the petitioners have sought review of the judgment and order dated 3.3.2016 passed by this Court in Civil Revision Application No.328 of 2007. By that order, Civil Revision Application was allowed and the order dated 13.4.2007 passed by the learned Civil Judge, Junior

Division, Khalapur below Exhibit-18 in Regular Civil Suit No.23/2004 was set aside and the plaint was ordered to be returned to the plaintiffs for presentation before the proper Court.

4. In support of this Petition, Mr. Apte raised following contentions :

- (i) In view of Section 85 of the Maharashtra Tenancy and Agricultural Lands Act (for short, 'Act'), the Civil Court has no jurisdiction to settle, decide or deal with any question which is by or under the Act is required to be settled, decided or dealt with by the Authorities under the Act. In any case in view of Section 85A of the Act, any issue which is required to be settled, decided or dealt with by the Authorities under the Act is raised, the Civil Court has to stay the suit and refer such issues to such Competent Authority for determination.
- (ii) In view of Section 32G of the Act, the plaintiffs became deemed purchasers.
- (iii) While deciding the application under Order VII Rule 11 of C.P.C., the Court has only to consider the averments made in the plaint. In paragraph-14 of the impugned order, it was observed that the plaintiffs have not produced any order passed by the Tribunal or Mamlatdar accepting plaintiffs claim that Pandurang was cultivating the suit land as a tenant as on

1.4.1957. He submitted that while deciding application under Order VII Rule 11, it was not necessary to produce material. That stage is yet to come. It was, therefore, incorrect on the part of this Court to observe that the plaintiffs did not produce any order passed by the Tribunal or Mamlatdar accepting the plaintiffs claim.

5. On the other hand, Mr. Walimbe supported the impugned order. He submitted that the contentions raised in this Review Petition were also raised in Civil Revision Application and the same were considered. He has taken me through the order and in particular paragraphs-10 and 11 recording the submissions based on Sections 32 and 85-A of the Act.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. In paragraph-13 of the order, the prayer clauses (a) and (b) in the suit were considered and it was observed that the entire claim made by the plaintiffs was on the basis that Pandurang was cultivating the suit land as on 1.4.1957 and by virtue of Section 32 he became deemed purchaser. In paragraph-14 it was observed that though the plaintiffs claimed that Pandurang was cultivating the land as a tenant as on 1.4.1957, *prima facie* the plaintiffs did not produce the proceedings under Section 32G of the Act. It is in that

context, it was observed that the plaintiffs have not produced any order passed by the Tribunal or Mamlatdar accepting plaintiffs case that Pandurang was cultivating the suit land as a tenant as on 1.4.1957. Having regard to prayer clause (a) of the suit, said prayer could have been considered only by the Authorities under the Act and not by the Civil Court. As far as prayer clause (b) is concerned, essentially by that prayer the plaintiffs have sought cancellation of the mutation entries and it was observed that said relief is a consequential relief depending upon grant of relief claimed in terms of prayer clause (a). In paragraph-15, the decision of Apex Court in the case of **T. Arivandandam vs. T.V. Satyapal and another, (1977) 4 SCC 467** was referred and it was thereafter observed that the entire foundation of the suit was that initially Kashiram and after his death his brother Pandurang was cultivating the suit land as on 1.4.1957 and thus became deemed purchaser. In paragraph-16 it was further observed that the plaintiffs did not produce any material on record either to show that enquiry was held by the Tribunal or that tenancy Authorities have passed order under Section 32G proceedings accepting the claim of the plaintiffs.

7. It is material to note that the suit was instituted in the year 2004. Between 1957 and 2004 no attempt appears to have been made by the plaintiffs by moving the authorities

under the Act for declaration that the plaintiffs are deemed purchasers under Section 32 or that they are tenant by adopting proceedings under Section 70(b) of the Act.

8. In the case of **Kamlesh Verma Vs. Mayawati**, AIR **2013 SC 3301**, the Apex Court while considering scope of review has observed thus :

“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.”

12. Applying the tests laid down by the Apex Court in the case of **Kamlesh Verma** (*supra*), I do not find that any ground is made out for seeking review of the order. Hence Review Petition fails and the same is dismissed.

(R. G. KETKAR, J.)