

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION NO. 105 OF 2016
IN
WRIT PETITION NO. 7439 OF 2015**

Shri. Maruti Ganpat Badak and anr. ... Petitioners

vs.

Shri. Maruti Bahiru Malekar and ors. ... Respondents

Mr. S. R. Ganbhavale i/by K. N. Kandekar, Advocate for the petitioners.

Mr. Sandesh D. Patil a/w Ms. Anusha Amin, Advocate for respondents no.1 to 12 and 14.

Mr. S. D. Rayrikar, A.G.P. for respondent 15.

Coram : Smt. R. P. SondurBaldota, J.

Date : 18th October, 2016

P.C. :

1. By this petition the original petitioner seeks review of order dated 7th June, 2016, by which his writ petition is dismissed. Perusal of the grounds (a) to (g) stated at para 10 of the petition shows that each ground therein except for the ground (a) is in the nature of finding fault with the order for failure to appreciate the material on record. Such grounds are beyond the purview of Section 114 and order 47 Rule 1 Civil Procedure Code. The ground stated at (a) is a general ground, which states that the judgment under review suffers from the errors apparent on the face of record.

2. Mr. Ganbhavale, the learned advocate for the

petitioners submits that the error apparent on the face of the record is that rejection of the petitioners challenge to the impugned order is based on irrelevant material. He submits that the order impugned in the petition arose out of the petitioners application for entering his name as "wahiwatdar" in Form 12 of 7/12 extract for the land at Survey Nos.131 and 132. The only fact relevant for considering that application was whether he is in actual possession of the two properties. The fact of pendency of proceedings initiated by the petitioners for declaration of their right as tenants in respect of the property, is not relevant.

3. Mr. Patil, the learned advocate for respondents no.1 to 12 and 14 opposes the application with submission that the petitioners have not made out any ground for review of the order. He relies upon the decision of the Apex Court in the case of ***Parsion Devi and ors. vs. Sumitri Devi and ors.*** reported in ***(1997) 8 Supreme Court Cases 715*** to submit that the mistake or error apparent on the face of the record must be patent and self-evident. If it is required to be detected by process of reasoning, it cannot be said of an error apparent on the face of the record. The relevant observations from the decision cited read as follows.

9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or 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 under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be

remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

4. In the facts and circumstances, in my opinion the submission advanced by Mr. Ganbhavale cannot be accepted. The name of Maruti, the father of the petitioner was in Form 12 of 7/12 extract during the period 1954 to 1965. It is seen deleted from 1966 onwards. The impugned order notes that, there was gatwari of the land in the village and opines that the name was apparently deleted since gatwari. But gatwari was never challenged by Maruti before the Revenue Authorities. He also did not challenge the deletion of his name. The petitioners filed their application for the first time in the year 1986-1987 for inclusion of their names in the revenue records and the application was based solely on the claim that Maruti was a protected tenant in respect of the land. In these circumstances, the impugned order holds that, the right of tenancy claimed by the petitioner being admittedly disputed and the petitioners having filed proceedings for declaration of tenancy there can be no change in the revenue records until the right is established. In these facts of the case, it cannot be said that the consideration of pendency of the proceedings for declaration of the right of tenancy was irrelevant. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]