

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.14 OF 2015
IN
CIVIL REVISION APPLICATION NO.385 OF 2014

Surendra Gajanan Tavde

and others

..Petitioners

Versus

Anantkumar Asharam Jain

..Respondent

....

Mr. R.A. Thorat, Senior Counsel, i/b. J.K. Shah, for the petitioners.

Mr. Shreepad Murthy a/w. Ms. Nandini Joshi i/b. Narasimhan Raja, for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 20th JANUARY, 2016

P.C.

1. Heard Mr. R.A. Thorat, learned Senior Counsel for the petitioners and Mr. Shreepad Murthy, learned Counsel for the respondent, at length.

2. This Review Petition is filed seeking review of the order dated 11.8.2015 passed by this Court in Civil Revision Application No.385 of 2014. By that order, after hearing both sides, the Civil Revision Application directed against the

judgment and decree dated 14.2.2014 passed by the learned Judge, City Civil Court, Mumbai in S.C. Suit No.1228 of 2010 was admitted by issuing Rule. As far as interim order is concerned, the Receiver, High Court, Bombay was appointed in respect of the suit premises with all the powers under Order 40 of C.P.C.. The respondent-plaintiff was appointed as Agent of the Court Receiver without the payment of any royalty and security. The receiver was directed to take possession from the petitioners-defendants and put the respondent-plaintiff in possession thereof within two weeks, if necessary after taking assistance from the police for taking possession and putting the respondent-plaintiff in possession thereof.

3. Mr. Thorat submitted that in pursuance of the interim order, the Receiver has taken possession of the suit property from the petitioners and put the respondent-plaintiff in possession thereof.

4. Mr. Thorat submitted that the Suit instituted by the respondent under Section 6 of the Specific Relief Act, 1963 itself is not maintainable in view of Section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act,

1971 (for short, 'the said Act'). He has taken me through (1) Section 22 of the said Act, (2) paragraph-3 of the written statement, (3) notification dated 30.8.1977 published in Maharashtra Government Gazette dated 15.9.1977 which shows that CTS No.332 admeasuring 2430.0 square metres is declared as Slum Area, (4) letter dated 15.1.2003 addressed to the Secretary of Shri Siddhivinayak Co-operative Housing Society (proposed), 13/3, Anjana Estate, Bhandup Village Road, Bhandup (W), Mumbai – 400 078.

5. Mr. Thorat submitted that in paragraph-1 of the plaint, the respondent herein alleged that the defendants are trespassers and illegal occupants of a portion admeasuring 210 sq. mt. of **room No.34, Chawl No.1, Anjana Estate, Village Road, Bhandup (W), Mumbai – 400 078**. He submitted that in paragraph-1 of the plaint, the plaintiff has not mentioned that the suit property is situate in CTS No.332. The fact is that room No.34 of Chawl No.1 is situate in Anjana Estate. Having regard to letter dated 15.1.2003 it clearly establishes that the property in dispute situate in Anjana Estate which is declared as a Slum Area. He fairly stated that though specific contention was

raised by the defendants in the written statement, no specific issue was framed on this aspect. He, therefore, submitted that the issue as to - 'whether the Suit in view of Section 22 of the said Act is maintainable or not' may be framed and the parties may be permitted to lead evidence in the trial Court. The trial Court, in turn, may be directed to transmit the finding along with evidence to this Court, pending hearing and final disposal of the C.R.A..

6. On the other hand, Mr. Murthy submitted that no case is made out for reviewing the order passed by this Court. He submitted that though no issue was framed, the defendants have led the evidence to substantiate their plea that the suit premise is situate in CTS No.332 which is part and parcel of Slum Area. The learned trial Judge held that the evidence produced by the defendants is vague, scanty and highly insufficient to disclose that the suit premises is part and parcel of CTS No.330 and 332. He, therefore, submitted that it is not necessary to frame the issue as prayed for by the petitioners.

7. I have considered the rival submissions advanced by

learned Counsel appearing for the parties. I have also perused the material on record. As stated earlier, the application instituted by the review petitioners is already admitted by issuing Rule. Even though no issue was framed as regards maintainability of the Suit in view of Section 22 of the said Act, nonetheless the defendants have led the evidence. In view thereof, it is not possible to accept the submission of Mr. Thorat to frame additional issue.

8. In the case of **Kamlesh Verma vs. Mayavati and others**, reported in **AIR 2013 SC 3301**, Apex Court held that 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.

9. In view thereof, no case is made out for review of the order. Hence, the review petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)