

JPP

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

*REVIEW PETITION NO. 1 OF 2005
in
SECOND APPEAL NO. 1197 OF 2004*

1. Mr. Radhakrishan Mahipatrao
Chavan (since deceased)

1A. Smt. Saibai Mahipatrao Chavan
and Ors.

V/s.

... Petitioners.
(Orig. Appellants.)

Govind Laxman Rajendra & Ors.

... Respondents.

Mr. Kunal Kumbhat i/b. Ms. Sunanda Kumbhat for the Petitioners
in RPS 1/05.

Mr. Kuldip Pawar a/w. Ravi Shinde i/b. S.M. Gorwadkar for the
Respondents 1, 2A, 3 to 5 and 7.

CORAM : N.M. Jamdar, J.

12 July, 2016.

P.C. :-

The Review Petition is pending since the year 2005. Review is sought of the Judgment and Order passed in Second Appeal No. 1197 of 2004 which was disposed of on 29 November 2004. The Second Appeal arose from the Suit filed by the

Appellants for a declaration that the decree passed in Civil Suit No. 219 of 1957 is not binding on the Appellants. Proceedings in the Regular Civil Suit No. 219 of 1957 reached the Apex Court and when the Darkhast proceedings pursuant to the order passed by the Apex Court in the year 1966 were instituted in the year 1974, that the Suit was filed. In this Review Petition an order of status-quo was passed and the review is pending for last almost 11 years. When the Review Petition came up on board on 2 April 2016, none appeared for the Petitioners and the Review Petition was placed today on board for dismissal.

2. Heard learned Counsel for the parties.

3. The learned Single Judge while disposing of the Second Appeal did not find any question of law in the Appeal. The learned District Judge had held that in view of Order 21 Rule 97 of Code of Civil Procedure, all questions in respect of the execution of the decree will have to be agitated in the execution proceedings and not by way of a separate Suit. The learned District Judge relied upon the decision of the Apex Court in the case of *Ghasi Ram and Ors. v/s. Chait Ram Saini and Ors.* reported in *AIR 1998 SCC 2476* is misplaced. The learned Single Judge, while dismissing the Appeal, did not interfere with the finding of the learned District Judge. The contention of the Review Petitioner is that this was an error

committed by the learned single Judge. If the Appellants were aggrieved by the dismissal of the Second Appeal, they ought to have taken the matter further. In the Review Application it is stated that the Appeal is drafted against the order however, no Appeal is filed. The ground given in the review is that it remained on their part to point out certain documents, which could not be produced earlier, after exercise of due diligence. There is no question of producing any additional documents as no documents which are not part of the record could any way be produced and relied upon the Second Appeal. What the Review Petitioners are essentially seeking is only a re-hearing of the Appeal after the change of Advocate. The grounds on which review power can be exercised is limited. No ground at all for reviewing the order is made out.

4. Considering the fact that the Review Petition is pending since 2005 as afore-stated and the Suit of which the decree sought to be executed was instituted in the year 1957, while hearing the Review Petition, I have called upon the learned Counsel for the Petitioner to state in brief the case in the Second Appeal on merits, assuming the Appeal is to be heard again.

5. It is case of the Appellants that the Appellants were tenants of one Jiyauddin Khatib and when the landlord i.e. the family of Rajendra had instituted a Suit against Jiyauddin Khatib in the year 1957, the Appellants were not party and they had become

tenants in the Suit property by virtue of provisions of Rent Act then applicable. Suit No. 219 of 1957 was filed by Rajendra's family against Jiyauddin Khatib which was decreed on 23 February 1961. The Appeal filed was dismissed on 15 June 1961. Revision filed in this Court was disposed of in the year 1962. Thereafter, by filing consent terms in the Apex Court on 27 February 1969, the Apex Court directed Jiyauddin to hand over possession of the property on or before 7 November 1972. Since the possession was not handed over, the execution proceedings were filed seeking execution against the decree holder. The learned District Judge after assessment of evidence of PW-1 Saibai, who was 15 to 16 years old at the relevant time, recorded a finding of fact that the Appellant could not be stated to be occupant and in possession of the Suit property on the date of the Suit and had not acquired status of a tenant by virtue of Section 14 or by way of Amending Act. That the Appellant was not in possession of the Suit property on the relevant date, is a pure finding of fact which has been rendered after assessment of evidence.

6. Therefore, even on merits of the Second Appeal, the Appellant does not have any right to obstruct the decree holder from executing the decree. Therefore, even assuming the Review Petition of the Petitioner is to be granted and the merits of the Second Appeal is looked into, the Appellant cannot succeed.

7. What emerges from the entire proceedings is a sheer abuse of process of law whereby the decree obtained by the Respondent - landlord which was granted to them by the Apex Court in the year 1969 is sought to be obstructed on completely frivolous grounds. The Apex Court has time and again warned the Courts to guard against such abuse, highlighting the plight of the decree holder.

8. In the circumstances, neither there is any error in the order under review nor there is any question of law arises in the Second Appeal even if review is to be allowed. What are challenged are pure questions of fact. The Review Petition is accordingly dismissed.

(N.M. Jamdar, J.)