

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 8 OF 2013
IN
SECOND APPEAL NO. 310 OF 2012

M/s. Unity Builder and Land Developers & Ors. ... Petitioners
Vs.
Palakkil Chundayil Govindan Nambiar & Ors. ... Respondents

Mr. U.S.R. Singh, Advocate for the petitioners.

CORAM: **MRS.MRIDULA BHATKAR, J.**
(In chamber)
DATE: **5th FEBRUARY, 2016**

P.C.:

The respondents are served through publication, however, none present for them.

2. The learned counsel for the petitioners submitted that the order passed by this Court on 22nd August, 2012 be reviewed. He submitted that at the time of passing the order, the First Appellate Court has not considered the evidence tendered before the trial Court. He submitted that if such documentary evidence is not considered by the Appellate Court while allowing the Appeal, then it itself becomes a substantial question of law. In support of his submissions, he relied on the following decisions:

- (i) Balunki Rout & Ors. vs. Sri Kunja Behari Deb & Ors., reported in AIR 1927 Patna 209 (FB).

(ii) *Achutananda Baidya vs. Prafulla Kumar Gayen & Ors.*, reported in 1997 Supreme Appeals Reporter (SC) 433.

He submitted that the question of right of way was involved in this matter. He further submitted that the Appellate authority has considered the letter of the Planning Authority to decide the right of the petitioners, which is not correct but it ought to have considered other documents.

3. In **Achutananda Baidya** (*supra*), it is held that if evidence on record in respect of a question of fact is not considered, then such finding is perverse and, therefore, the High Court has jurisdiction under Article 227 of the Constitution to deal with the matter.

4. In **Balunki Rout** (*supra*), the Full Bench has dealt with the question that whether in the Second Appeal, the Court is entitled to go beyond the findings of the Lower Appellate Courts.

5. While passing the impugned order dated 22nd August, 2012, that was not the issue. As the scope of review is limited, I do not think the submissions of learned counsel has made out a ground under Order 47 and under section 114 of the Civil Procedure to allow this Review Petition. Hence, Review Petition is dismissed.

(MRIDULA BHATKAR, J.)