

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION STAMP NO. 6532 OF 2016
IN
WRIT PETITION NO. 6889 OF 2013**

Shivraj Bhagwantrao Deshmukh
Age : 58 Yrs., Occ. : Agriculture,
R/o : Dharmabad, Tq. Dharmabad,
Dist. : Nanded, at present residing
at Mudhol, Tq. Mudhol, District : **..... APPLICANT/
Adilabad [A.P.]. [ORI. DEFENDANT NO. 1]**

V E R S U S

1. Santoshi @ Pallavi d/o Shivraj Deshmukh, Age : 19 Yrs., Occ. Education, R/o : Mudhol, Tq. Mudhol, Dist. : Adilabad.
2. Madhavi d/o Shivraj Deshmukh, Age : 20 Yrs., Occ. Education, R/o : Mudhol, Tq. Mudhol, Dist. Adilabad.
3. Geetanjali d/o Shivraj Deshmukh, Age : 22 Yrs., Occ. Education, R/o : Mudhol, Tq. Mudhol, Dist.

Adilabad.

4. Sulochana d/o Shivraj Deshmukh,
Age : 20 Yrs., Occ. Education,
R/o : Mudhol, Tq. Mudhol, Dist. ... **RESPONDENTS/
Adilabad. [ORI.PLAINTIFFS 1 TO 4]**
5. Vaijnathappa s/o Bhujangrao
Tamshette, Age : 70 Yrs.,
Occ. Agriculture, R/o :
Charthana, Tq. Jintur, Dist.
Parbhani.
6. Manikarmila w/o Vaijnathappa
Nagore, Age : 55 Yrs.,
Occ. Household, R/o :
Karshi Savathi colony, Opp.
Kaman, Tq. and District :
Parbhani.
7. Someshwar s/o Narayan Patil
Kargaonkar, Age : 39 Yrs.,
Occ. Agriculture, R/o :
Chitliputli, Tq. and District
Jalna.
8. Madhav s/o Narayan Patil
Kargaonkar, Age : 48 Yrs.,
Occ. Agriculture, R/o :
Chitliputli, Tq. and District
Jalna.

9. Narayan s/o Santoba Patil
Kargaonkar, Age : 79 Yrs.,
Occ. Agriculture, R/o :
Chitliputli, Tq. and District ... **RESPONDENTS/
Jalna. [ORI.DEFENDANTS 2 TO 6]**

.....

Mr. S.S.Chapalgaonkar, Advocate for Applicant.
Mr. A.G.Godhamgaonkar, Advocate for R – 1 to 4.
Mr. A.A.Mukhedkar, Advocate for R – 5.
Mr. S.S.Gangakhedkar, Advocate for R – 6.

.....

CORAM : SUNIL P. DESHMUKH, J.
DATE OF JUDGMENT : 17th FEBRUARY, 2017

.....

ORAL JUDGMENT :

1. Heard learned counsel for the parties.
2. Learned counsel for the applicant contends that in view of the decision of the Supreme Court rendered in the case of *Prakash & Ors. Vs. Phulavati & Ors. Reported in 2016 (1) Mh.L.J. 1*, the status and competence of a daughter stands fairly explained and in the circumstances suit for partition, during life time of father, would tantamount to a suit without cause of action. He refers to paragraphs No. 22 and 23 of the said

judgment, which read thus :

" 22. *In this background, we find that the proviso to section 6 (1) and sub-section (5) of section 6 clearly intend to exclude the transactions referred to therein which may have taken place prior to 30th December, 2004 on which date the Bill was introduced. Explanation cannot permit reopening of partitions which were valid when effected. Object of giving finality to transactions prior to 20th December, 2004 is not to make the main provision retrospective in any manner. The object is that by fake transactions available property at the introduction of the Bill is not taken away and remains available as and when right conferred by the statute becomes available and is to be enforced. Main provision of the Amendment in section 6 (1) and (3) is not in any manner intended to be affected but strengthened in this way. Settled principles governing such transactions relied upon by the appellants are not intended to be done away with for period prior to 20th December, 2004. In no case statutory notional partition even after 20th*

December, 2004 could be covered by the Explanation or the proviso in question.

23. Accordingly, we hold that the rights under the amendment are applicable to living daughters of living coparceners as on 9th September, 2005 irrespective of when such daughters are born. Disposition or alienation including partitions which may have taken place before 20th December, 2004 as per law applicable prior to the said date will remain unaffected. Any transaction of partition effected thereafter will be governed by the Explanation. "

3. The thrust appears to be on that since disposition of the property under sale to defendant No. 6 having taken place before 28/12/2004, the same would be unaffected in the *lis* initiated by the daughters.

4. Mr. Godhamgaonkar, learned counsel for respondents No. 1 to 4 contends that the plea now being taken seeking review of the judgment and order of this court is an otiose one, for the plaintiffs – daughters do not seek entitlement to partition of properties with reference

to amendment to section 6 of the Hindu Succession Act. As a matter of fact, they already had pre-existing right under State amendment way back in the year 1994. The plaintiffs – daughters were not married then. The distinction between the status of son and daughter *vis-a-vis* coparcenary property is concerned, stood washed out and is a thing of the past. He submits that there is no prohibition for institution of suit by daughters in their capacity as coparcener seeking partition in view of section 29-A incorporated via Maharashtra State amendment to Hindu Succession Act.

5. Learned counsel for the review applicant is being supported by Mr. Gangakhedkar, learned counsel for respondent No. 6. He submits that a right to a daughter would accrue upon death of their ancestor and her suit itself is against her father. Section 29-A particularly relates to such a right and in such circumstances section 29-A as is sought to be applied would not give any benefit to the plaintiffs – daughters.

6. While the arguments are being so advanced and issue is sought to be re-agitated, one will have to keep at the back of mind while review of the order would

be considered that, primarily a subsequent judgment after the order has been passed, will hardly be a ground for seeking review of the order. Secondly, paragraphs No. 22 and 23 of the Prakash's judgment [supra] on which reliance has been placed on behalf of the defendants No. 1 and 6, does not appear to affect the litigation initiated by the plaintiffs – daughters. Pursuant Maharashtra State amendment to Hindu Succession Act, a right is purportedly being asserted to suit property. In the circumstances, it does not appear to be a case wherein it can be straight away said that there is no cause of action or there can be no rights to the plaintiffs. It can not be said *per-se* that any bar is incurred subsequently.

7. In the circumstances, it does not appear that the application holds any water. It does not appear that any case has been made out for review of order dated 20/08/2015 in Writ Petition No. 6889 of 2013. The review application stands rejected.

[SUNIL P. DESHMUKH, J.]