

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

943 REVIEW APPLICATION (CIVIL) NO. 193 OF 2016
IN SA/307/2000

SOW. SUSHMA GOVIND RANE AND ORS
VERSUS
PRAVARA MURLIDHAR KULKARNI DIED LRS
MURLIDHAR AND ORS

Shri. S.B. Bhapkar, Advocate, for applicants.

Coram: T.V. NALAWADE, J.

Date: 17 March 2017

ORDER:

1) The application is filed by some of the legal heirs of defendant No.1-Premchand Patil of Regular Civil Suit No.119/1992 which was pending in the Court of the Civil Judge, Junior Division, Bhusawal. The suit was filed against the predecessor-in-title of the present applicants and other defendant for the relief of injunction and declaration. Declaration was claimed that sale deed executed by defendant No.2 in favour of defendant No.1 is void as the property was already sold to the plaintiff under registered sale deed. Suit was dismissed by the trial Court

but the appeal was allowed by the District Court and then Second Appeal No.307 of 2000 was filed. This Court has dismissed the second appeal by holding that no substantial question of law as such is involved in the matter.

2) Learned counsel for the applicants submitted that the applicants are the daughters of defendant No.1 and only the son had come on the record and they had avoided to bring the daughters of defendant No.1 on the record. This point is not having any relevance as the relief claimed was only in respect of the sale deed and the sale deed was executed by defendant No.2. In any case when the parties are Hindus and some heirs of the deceased could have defended the matter filed for declaration in respect of the sale deed, it cannot be said that the daughters could have taken different defence than the defence taken by the son of defendant No.1.

3) Learned counsel for the applicants argued that the plaintiff did not step in witness box and she examined power of attorney. He placed reliance on the case reported

in the case as **AIR 2005 SC 439 (Janki Vashdeo Bhojwani v. Indusing Bank Ltd.)**. In the present matter evidence given by the power of attorney was not that significant as the matter was required to be decided on the basis of the sale deed. There was registered sale deed executed in favour of the plaintiff which was first in time and after that original owner had sold the property under another sale deed in favour of defendant No.1. These things could not have been changed and proof of only sale deed by plaintiff which was executed in favour of the plaintiff was sufficient.

4) Learned counsel for the applicants then submitted that the point of limitation was not properly considered. This point also need not be considered in view of the aforesaid discussion but in any case it can be said that when there was no title left with the original owner and there was no question of passing of the title by defendant No.2 in favour of defendant No.1 and so the question of limitation does not arise in the matter like the present one.

5) The learned counsel for the applicants submitted that point of limitation was wrongly considered by the District Court to set aside the order of the trial Court and so the applicants want to review of the order. It is clear that only to see that the decree given in favour of the plaintiff is not made operative, it is not allowed to be executed, present proceeding is filed. Apparently, the applicants have no adverse interest as against their brother who contested the matter. In view of these circumstances this Court holds that no permission to file review can be granted. There is no question of review of the matter. The application is rejected.

Sd/-
(T.V. NALAWADE, J.)

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