

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

**917. REVIEW APPLICATION NO. 228 of 2017
IN
SECOND APPEAL No. 582 of 2017
WITH
CIVIL APPLICATION NO. 11602 OF 2017
IN
REVIEW APPLICATION NO. 228 OF 2017**

Chhagabai D/o Raghunath Gadhekar

...APPLICANT

VERSUS

Darubai W/o Raghunath Gadhekar and others

... RESPONDENTS

Mr R.P. Bhumkar, Advocate for petitioner
Mrs A. N. Ansari for respondents No. 2 to 6.

CORAM : NITIN W. SAMBRE, J.

DATE :19th September, 2017

ORAL ORDER :

Regular Civil suit No. 6 of 2001 was filed by the applicant seeking partition and separate possession, which came to be dismissed on August 2, 2006, confirmed in Regular Civil Appeal No. 236 of 2006 decided by the District Judge-3, Aurangabad on September 15, 2012, and further confirmed in Second Appeal No. 582 of 2017 vide Judgment

and order dated 21st July 2017, in which present application for review is moved by the appellant/original plaintiff.

2. This Court while dismissing the appeal against the concurrent findings, noted that the present appellant/plaintiff has admitted partition between her father Raghunath and uncle Kisan during life time of Buwaji. The Court further inferred that there was exclusion of Laxmibai and Darubai, who were step mother and mother of the applicant, respectively, out of their marriage with Raghunath.

3. In the aforesaid backdrop, present application for review is pressed by Shri Bedre, learned Counsel for the appellant on the ground that before 1996 Amendment to the Hindu Succession Act, a married daughter was entitled for share from her father's share in the ancestral property. According to him, admission, if any, given by the appellant is very weak piece of evidence in view of provision of Section 31 of the Evidence Act and should not have been read in ditto sense in evidence against interest of the appellant. He would then urge that the claim of the appellant, as such, should have been considered to the extent of entitlement of her share from the property of deceased Raghunath, her father, and sought review of the judgment.

4. Per contra, Mrs. Ansari, learned Counsel for the respondents/defendants would urge that this Court after considering all arguments, as was canvassed during the hearing of the Second Appeal, delivered the Judgment. She would bring to the notice of this Court difference between the scope of Review and Appeal and submits that the review application be dismissed as the issues were not canvassed at the relevant time.

5. Considered the rival submissions. I hardly see any convincing ground so as to take and drive me to the conclusion that the judgment dismissing the Second Appeal warrants any interference, particularly, by ordering a review for the following reasons.

6. In Regular Civil Suit No. 6 of 2001, what was claimed by the present appellant is that property, which had gone to the share of Nana, born to her uncle Kisan, be partitioned and possession thereof be handed-over to her. The subsequent purchasers of the property were also impleaded. The aforesaid position as is reflected in the plaint and the fact that the present appellant had given admission of partition between her father Raghunath and Kisan, was formed to be a basis for dismissal of the Second Appeal.

7. The issue of seeking partition of share in the property of deceased Raghunath was never canvassed before this Court. Apart from above, the fact remains that the perusal of the plaint and the admissions given do not speak of any such case, which was canvassed by the appellant. For the aforesaid reasons, in my opinion, there is no substance in the Review Application. Application must fail, and as such, stands dismissed.

8. In the consequence, Civil application also stands disposed of.

(NITIN W. SAMBRE, J.)

pjm