

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 5 OF 2017

IN

SECOND APPEAL NO. 119 OF 2016

**MS. KUNDA VASSUDEO PAKHADE ALIAS
PAKALE.,**

... Applicant

Versus

SHRI. ABHIJIT GANGADHAR NAIK.,

... Respondent

Mr. Preetam Talaulikar, Advocate for the Applicant.

Coram:- C. V. BHADANG, J.

Date:- 14th June, 2017

P.C:

This is an application for review of the order dated 01.12.2016, passed by this Court (Coram: Smt. R.P. Sondurbaldota, J.) in Second Appeal No. 119/2016. By the said order, this Court has dismissed the Second Appeal filed by the applicant.

2. The case of the applicant before the Trial Court was that, she is the co-owner of the suit property, in which there were three separate structures and one pig type toilet. It was contended that the said toilet was demolished by the respondent and the respondent started construction of a new room covering an area of about 7.3 metres x 7.4 metres.

3. The learned Trial Court dismissed the suit, which was

confirmed in appeal.

4. This Court in para 3 of the order observed that the appellant has not examined herself, however, she examined the wife of Tukaram Bandekar, whose evidence was found to be completely inconsistent with the pleadings. Sunita Bandekar (wife of Tukaram Bandekar) claimed that there were five houses in the suit property with two pig type toilets and both these toilets were demolished as far back as in the year 2003. Thus, this Court found that there was no infirmity in the findings of fact concurrently recorded by the Courts below.

5. The learned Counsel for the applicant submits that the appellant had examined herself and the observation that the appellant has not examined herself is not correct. Secondly, it is submitted that one of the co-owners cannot effect construction without the permission of the others. Except this, there is no other contentions raised.

6. I have carefully considered the circumstances and the submissions made. It is true that the observations in the opening part of para 3 that the appellant has not examined herself is incorrect, however, that by itself, is not sufficient to review/recall the impugned order. The ultimate finding recorded by this Court was that the evidence of PW-2 was discrepant with the case

made out by the applicant. If we look at the evidence of PW-1, she states that there were three houses and one toilet, while PW-2 states that there were five houses with two pig type toilets and both the toilets were demolished in 2003 itself. Thus, nothing turns on the observation that the appellant has not examined herself, insofar as the finding recorded is concerned. Even, so far as the contention that a co-owner cannot effect construction without the permission of the other co-owners is concerned, it has clearly come in the evidence of PW-2 that the toilets were demolished long back. Even according to the appellant, the respondent was trying to effect a construction by demolishing the existing toilet and further more, this Court has also found that the plaint was not accompanied by a sketch showing the alleged construction carried out by the respondent and therefore, the Courts below have correctly applied the provision of Order VII, Rule 3 of CPC.

7. All these findings do not derogate from the pleadings and evidence on record. I thus find that there is no error apparent on the face of the record. Consequently, the Civil Application is dismissed.

C. V. BHADANG, J.

EV