

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION (ST.) NO.3552 OF 2016
IN
WRIT PETITION NO.11411 OF 2015

Digamber Rohidas Agawane ... Petitioner
Vs.
Hemant Nandkumar Shitole and others ... Respondents

Mr. Vishwanath S. Talkute for Petitioner.
Mr. Vishwajeet S. Kapse for Respondents No.1 and 2.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 07, 2017

P.C. :

Heard Mr. Talkute, learned Counsel for petitioner and Mr. Kapse, learned Counsel for respondents No.1 and 2 at length.

2. This Petition is filed seeking review of the order dated 04.12.2015 passed by this Court in Writ Petition No.11411 of 2015. By that order, Writ Petition instituted by the petitioner, hereinafter referred to as 'defendant No.1', challenging the judgment and order dated 23.10.2015 passed by the learned District Judge, Satara in Miscellaneous Civil Appeal No.158 of 2015 was dismissed.

3. Respondents No.1 and 2, hereinafter referred to as 'plaintiffs', have instituted Suit inter alia praying for cancellation of the sale deed dated 07.02.2015 (wrongly typed as '06.02.2015') executed by respondent No.3 (defendant No.2) in favour of defendant No.1 and for declaration that the sale deed is not binding on the plaintiffs' share; for perpetual injunction restraining defendant No.1 from disturbing peaceful possession of the plaintiffs as also from ousting the plaintiffs from the

suit land without following due process of law; for damages to the tune of Rs.4.50 lacs from defendant No.1.

4. During the pendency of the Suit, plaintiffs took out application exhibit-5 for temporary injunction. The learned trial Judge rejected the application on 13.08.2015. Aggrieved by that order, plaintiffs preferred Miscellaneous Civil Appeal, which was allowed on 23.10.2015. It is against that order, defendant No.1 instituted Writ Petition No.11411 of 2015 in this Court, which was dismissed on 04.12.2015.

5. In support of this Petition, Mr. Talkute has invited my attention to the - (i) application made by the defendant No.1 to Gaon Kamgar Talathi under Right to Information Act, 2005 seeking information as regards names appearing in column No.1 of Gat No.48/2; (ii) certificate dated 11.01.2016 issued by Gaon Kamgar Talathi. In that certificate, it is set out that on inspection of crops cultivation for the year 2012-13 to 2014-15 in 7 x 12 extracts, names of Hemant Nandkumar Shitole, Vasudha Nandkumar Shitole and one appear. 'Hemant Nandkumar Shitole, Vasudha Nandkumar Shitole and one' means reference is made to third person. He also relied upon another certificate dated 11.01.2016 issued by Gaon Kamgar Talathi in respect of the year 2011-12. In that certificate, it is set out that for the year 2011-12, in 7 x 12 extracts, names of Kisan Baburao Jagtap, Hemant Nandkumar Shitole and Vasudha Nandkumar Shitole appear in the column of 'Kabjedar'. It is further set out in that certificate that on inspection of crops cultivation for the year 2010-11 and 2011-12, names of Kisan Baburao Jagtap, Hemant Nandkumar Shitole and Vasudha Nandkumar Shitole are jointly recorded and the entry is made as 'Khudda' i.e. personal cultivation. It is certified that Kisan Baburao Jagtap, Hemant Nandkumar Shitole and Vasudha Nandkumar Shitole are cultivating Gat No.48/2.

6. Mr. Talkute also relied upon the orders dated 30.05.2016 passed by the Sub-Divisional Officer, Phaltan Sub-Division, Phaltan in R.T.S. Revision Application No.44 of 2016 filed by Kisan Baburao Jagtap against Nandkumar Yadavrao Shitole (since deceased) through his legal representatives as also dated 20.05.2016 passed by the Sub-Divisional Officer, Phaltan Sub-Division, Phaltan in R.T.S. Appeal No.18 of 2015 preferred by Hemant Nandkumar Shitole and Vasudha Nandkumar Shitole against defendant No.1 and others. He submitted that these documents could not be produced earlier. As these documents show possession of defendant No.1 in respect of the suit land, the order dated 04.12.2015 deserves to be reviewed thereby allowing the Petition.

7. On the other hand, Mr. Kapse supported the order dated 04.12.2015. He has invited my attention to the findings recorded by this Court from paragraph 13 onwards.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. While dismissing the Petition, I have considered the sale deeds dated 29.08.1988 which show that plaintiffs have purchased 4 Hectares 22 Ares from Gat No.48. I have also referred to Vahivat Case and in particular, statement of defendant No.2 Kisan Jagtap, son of vendor dated 16.10.1993. In the statement, Kisan stated that right from the year 1993, names of plaintiffs have been recorded in respect of 4 Hectares 22 Ares of Gat No.48. In paragraph 21, it was noted that the trial Court has ignored material set out in clauses (i) to (vi) while dismissing the application for injunction preferred by the plaintiffs. After Petition was dismissed, oral application for stay of that order and District Court's order for a period of 4 weeks was made. That application was rejected. It was also clarified that the observations made therein are tentative and

prima facie and are made only for that purpose of considering correctness of the impugned order. The learned trial Judge was directed to decide the Suit on the basis of the evidence on record and on its own merits in accordance with law and uninfluenced by the observations made in the impugned order and in the order dated 04.12.2015. Though Mr. Talkute relied upon the information supplied under Right to Information Act as also certificates dated 11.01.2016 issued by Gao Talathi, he could not give any satisfactory explanation for not obtaining such certificates when application exhibit-5 was argued before the trial Court.

9. Mr. Talkute relied upon orders dated 30.05.2016 passed in R.T.S. Revision Application No.44 of 2016 and 20.05.2016 passed in R.T.S. Appeal No.18 of 2015 passed by the Sub-Divisional Officer, Phaltan Sub-Division, Phaltan. Perusal of order dated 30.05.2016 in R.T.S. Revision Application No.44 of 2016 shows that the Sub-Divisional Officer observed that the controversy raised therein is within the jurisdiction of the Civil Court. In fact, the Sub-Divisional Officer had dismissed the Revision filed by Kisan Baburao Jagtap. As far as the reliance dated 20.05.2016 in R.T.S. Appeal No.18 of 2015 is concerned, the Sub-Divisional Officer observed that in pursuance of the decision of the Civil Court, appropriate mutation entry can be made. That apart, the orders of the Revenue Authorities are subject to the orders of the Civil Court. In view thereof, the reliance placed by Mr. Talkute on these decisions does not advance the case of the defendant No.1.

10. In the case of ***Kamlesh Verma Vs. Mayawati***, AIR 2013 SC 3301, the Apex Court has considered the scope of review and has observed thus,

“The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face

of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of C.P.C. ”

11. Applying the tests laid down by the Apex Court to the facts of the present case, no case is made out. Hence, Review Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab