

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 7 OF 2017
FROM
FIRST APPEAL NO. 1277 OF 2003
IN
BOMBAY CITY CIVIL COURT AT BOMBAY
S.C. SUIT NO. 3667 OF 1989

M/s. Sarvodaya Builders Pvt. Ltd.	..Petitioner
<u>In the matter between :</u>	
M/s. Sarvodaya Builders Pvt. Ltd.	..Petitioner
versus	
Girdharilal Dindayal Agarwal & Ors.	..Respondents

Mr. Rajiv Chavan – Senior Advocate with Mr. A. Ghadge for Petitioner.
Mr. M. U. Pandey with Mr. Amit Potnis i/b. M/s. Tamhane & Co. for
Respondent Nos. 2 to 4.

CORAM: M.S. SONAK, J.
DATE : 29 NOVEMBER 2017

P. C. :

1] Heard Mr. Rajiv Chavan – Senior Advocate along with Mr. Ghadge for review petitioner and Mr. M. U. Pandey with Mr. Amit Potnis, learned counsel for the respondent nos. 2 to 4, who supports the review petition.

2] The contesting respondents to this review petition i.e. original appellants, though served through their Advocate, are not present.

3] This review petition seeks review of the judgment and decree dated 22nd February 2017 in first appeal no. 1277 of 2003 to the limited

extent as indicated in prayer clause (a) of the review petition, which reads as follows :

“(a) that this Hon'ble Court be pleased to review its Judgment dated 22nd February, 2017 to the extent modifying the Decree passed by the Trial Court ordering the Decree to be modified to be in respect of the land from 9864 Sq. Mtrs. instead of 10,570.40 Sq. Mtrs. and reinstate the Decree to be in respect of 10,570.40 Sq. Mtrs. or in the alternative to modify the Decree to read “the suit land bearing CTS Nos. 1, 2, 2(1 to 18) of Kurar Village, Malad (East), Mumbai 400 097”, situate to the North of Nalla / River;”

4] Mr. Chavan, learned Senior Advocate for the petitioner submits that the review petitioner's case is based upon the documents listed at paragraph 16 of the judgment and decree dated 22nd February 2017. He points out that in the documents at (a) to (d) the area of the property is referred to as 3 Acres and 7 Gunthas which corresponds to 12,700 sq. meters. He submits that for the first time in the document at (e) i.e. Deed of Conveyance dated 19 October 1949 and in the document at (f) i.e. Deed of Conveyance dated 10 June 1961 the area of the suit property was indicated as 11,800 sq. yards.

5] Mr. Patil submits that sometime in the year 1969, on the coming into force of the City Survey Rules, a survey was undertaken by the Authorities and the area was initially determined at 12,435.6 sq. meters or thereabouts. Later on, a rectification was effected and the area was scaled down to 10,570.40 sq. meters. He submits that it is for this reason that the suit was filed indicating the area of the suit property as 10,570.40 sq. meters. He submits that on this aspect, there is evidence in the course of examination-in-chief as well as cross-examination of the various witnesses. He submits that even the survey documents are a part of the record. He submits that there was no concession as such on the

aspect of area but all that was stated was that plaintiff i.e. review petitioner had no property to the South of the Nala.

6] Mr. Pandey, supports the review petition and points out to the observations in paragraph 25 of the judgment and decree dated 22nd February 2017, where it is recorded that in case of conflict between areas and boundaries, it is the boundaries which must prevail. He also points out that this Court has accepted this principle and has stated that there is no necessity to be drawn into disputes of area or for that matter into entries in survey record or revenue records. He submits that this Court may therefore review the decree by clarifying that the area of the suit property indeed admeasures 10,570.40 sq. meters or in the alternate, it may be clarified that the decree is in respect of the suit property which lies to the North of the Nala / River, without adverting to any specific area.

7] In my judgment, there is no case made out for exercise of review jurisdiction for several reasons.

8] Firstly, the appellants had raised a specific contention that the documents of the review petitioner at the highest indicate the area of the suit property as 11,800 sq. yards, which corresponds to 9,864 sq. Meters and yet, the review petitioner had approached the trial court with unclean hands by claiming that the suit property admeasures 10,570.40 sq. meters. In response to this contention, the learned counsel appearing for the review petitioner at the very outset, made it clear that the plaintiffs were restricting their claim to the area of 11,800 sq. yards which corresponds to 9,864 sq. meters, even though, in the plaint, the suit property was described as 10,570.40 sq. meters.

9] This was recorded in the judgment and decree dated 22nd February 2017 not just at one place, but at several places.

10] In paragraph 7, it is recorded as follows :

“7] Mr. Chavan, learned Senior Advocate appearing for the plaintiffs, at the outset submits that the plaintiffs categorically restrict their claim to the area of 11,800 sq. yards which corresponds to 9,864 sq. meters, even though, in the plaint, the suit property was described as 10,570.40 sq. meters.....”

11] In paragraph 16, it is recorded as follows:

“16] Mr. Chavan, learned senior advocate for the plaintiffs, very clearly states that the plaintiffs restrict their relief to the property admeasuring 11,800 sq. yards which corresponds to 9,864 sq. meters only, and not to the area of 10,570.40 sq. meters as pleaded in the plaint. Mr. Chavan, also agrees that the claim of the plaintiff is to be adjudicated upon basis of the following title documents :.....”

12] In paragraph 26, it is recorded as follows :

“26] Similarly, Mr. Chavan, learned Senior Advocate for the plaintiffs has also made a categoric statement that the suit property in its entirety can be taken to measure 9,864 sq. meters and further that no part of the suit property extends to the South of the river / nalla.....”

13] In paragraph 32, it is recorded as follows :

“32]It is to be noted that in this court, at the very outset, the plaintiffs made it clear that their claim is restricted to the extent of 11,800 sq. yards which corresponds to 9,864 sq. meters and not to 10,570.40 sq. meters.....”

14] Secondly, even now, it is case of the review petitioner that their title documents are ones referred to in paragraph 16 of the judgment and decree dated 22nd February 2017. Even assuming that the title documents at sr. nos. (a) to (e) referred to the area of the suit property as 3 Acres and 7 Gunthas corresponding to 12,700 sq. meters, there is no dispute and there can be no dispute that the Deed of Conveyance dated 19 October 1949 and the Deed of Conveyance dated 10 June 1961, which is, the precise Deed on the basis of which the review petitioner claim title refers to the area of the suit property as 11,800 sq. yards which admittedly corresponds to area of 9,864 sq. meters. On the basis of some survey undertaken in the year 1969, it is not permissible to alter or amend the Deed of Conveyance entered into and executed by the parties. Admittedly, no rectification has been carried out to the Deed of Conveyance dated 10 June 1961. By merely mentioning in the subsequent Conveyance dated 2 September 2003 that the area of the suit property is 10,570.40 sq. meters, the area, cannot stand enhanced.

15] Thirdly, this is clearly not a case of any error, much less, error apparent on the face of record. In the exercise of review jurisdiction, it is not open to re-appreciate the evidence or to look into any examination or cross-examination. The observations in paragraph 25 of the judgment and decree dated 22nd February 2017 obviously have to be construed in the context of a clear statement that the plaintiffs were restricting its right to the area of 11,800 sq. yards which corresponds to 9,864 sq. meters. In fact, the statement was made, quite responsibly by the learned Senior Advocate appearing for the plaintiffs realizing that the documentary evidence clearly indicates that the area of the suit property was only 11,800 sq. yards which corresponds to 9,864 sq. meters and nothing further. Accepting such explanation, the charge that the plaintiffs

had approached trial court with unclean hands was in fact rejected by this Court. Having secured such rejection, it is clearly impermissible for the review petitioner to now seek restoration of the additional area by instituting the review petition.

16] Fourthly, even assuming that there is some oral evidence on the aspect of area and such oral evidence is supported by some survey records, that by itself, is not at all sufficient to exercise review jurisdiction. Besides, such oral evidence or survey records have to be evaluated against the review petitioner's title documents, which, clearly and unambiguously referred to area 11800 sq.yards, i.e., 9864 sq.meters. Changes in survey records subsequently made, cannot, alter the effect of registered conveyance documents of the year 1949 and 1961.

17] There are certain statements made in the review petition, which are also completely improper. The review petitioner suggests that no concession was ever made by the counsel on the aspect of area. This is incorrect. The concession was made and therefore recorded at no less than four places. A statement that no concession was made has been verified as true to personal knowledge by Mr. Ramesh Gurnani. This is again improper. Since, Mr. Gurnani has not explained the manner in which he acquired such personal knowledge. Even apart from the concession, the title documents of the review petitioner itself clearly and unambiguously state the area of the suit property as 11800 sq.yards which correspondence to 9864 sq. Meters. Therefore, even if the concession is ignored, the relief as prayed for in the review petition, cannot be granted.

18] In the review petition, there is a statement at paragraph 10 that the judgment and decree has been made '*without going into the documents of survey and survey records and the said Conveyance dated 02.09.2003*' or without even taking the said documents into consideration. If the judgment and decree is perused, there is a very clear reference made to the Conveyance of 2 September 2003, wherein, the review petitioner, has indicated area of the suit property as 10,570.40 sq. meters. In fact, the judgment and decree directs appropriate corrections to the said Conveyance.

19] For the aforesaid reasons, this review petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

chandka