

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.49 OF 2013
IN
WRIT PETITION NO. 8104 OF 2012**

Sou. Banabai Maruti Chavan and
Ors.

..Petitioners.

Vs

Shri Balaso Ganpati Varekar and
Ors.

.. Respondents

Mr. Vijay Killedar, Advocate for Petitioners.

Mr. Abhaysingh Shinde i/b Mr Rahul Kulkarni, Advocate for
Respondent no.1.

CORAM : R.G.KETKAR,J.

DATE : 31/01/2017

PC:

1. Heard Mr.Vijay Killedar, learned counsel for the petitioners and Mr. Abhaysingh Shinde, learned counsel for respondent no.1 at length.

2. This Petition seeks review of the order dated 2.4.2013 passed by this Court (Coram: A.P.Bangale, J.) in Writ Petition No. 8104 of 2012. By that order, the Writ Petition instituted by the petitioners/defendants challenging the order dated 9.7.2012 permitting the plaintiffs to lead secondary evidence was rejected.

3. Mr. Killedar has invited my attention to the order dated 4.11.2011 passed by the trial Court. By that order, the learned trial Judge rejected the application filed by the plaintiffs for directing defendant no.3 to produce the copy of the agreement. The plaintiffs thereafter filed application for leading secondary evidence after producing photocopy of the agreement of sale. By

order dated 9.7.2012, the learned trial Judge allowed that application. Defendant's petition was rejected by this Court. Mr Killedar submitted that no foundation was laid by the plaintiff for leading secondary evidence. That apart, conditions laid down under section 65 of the Indian Evidence Act, 1872 are also not fulfilled. He, therefore, submitted that the order under review deserves to be recalled thereby restoring writ petition to its original position.

4. I have considered submissions advanced by learned counsel for the parties. I have also perused the material on record. While dismissing the petition, this Court noted that the earlier application filed by the plaintiffs for directing defendant no.3 to produce agreement was rejected after accepting the case of defendant no.3 that it is not in his custody. The plaintiffs thereafter produced photocopy of the agreement and prayed for leading evidence in respect of the original agreement. Though that application was contested by the defendants, the learned trial Judge allowed the application subject to proof of the said agreement. In paragraph 3, the learned Single Judge specifically referred to the contention based on section 65 of the Act. After considering that submission the learned trial Judge did not think it fit to interfere with the order in exercise of writ jurisdiction under Article 227 of the Constitution of India. Oral application for stay was also made on behalf of the petitioners which was

granted and the order was stayed.

5. As this Court did not think it fit to exercise jurisdiction under Article 227 after recording reasons thereof, no case is made out for seeking review of the order. In the case of **Kamlesh Verma Vs. Mayawati**, AIR 2013 Supreme Court 3301, it is observed by the Apex Court as under :

“.. ... 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 re-heard 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. “

In view thereof, Review Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)