

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Review Petition No. 7 OF 2016
IN
Civil Revision Application NO. 173 OF 2015

Vakeel Usman Mujawar	...Petitioner
<i>Versus</i>	
Shri. Dagduddin Yasin Mujawar	
And Ors	...Respondents
....	
Mr.S.G. Kudle, Advocate for the Petitioner.	
....	

CORAM : R. G. KETKAR, J.

DATE : 04th AUGUST, 2017

P.C.

1. Heard Mr.S.G. Kudle, learned counsel for the petitioner, at length.

2. By this Petition under Section 114 read with Order XLVII of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the petitioner has sought review of the order dated 3.5.2016 passed by this Court in C.R.A. No.173/2015. By that order, this Court dismissed Revision Application filed by the petitioner, hereinafter referred to as the 'plaintiff', challenging the judgment and order dated 17.11.2014 passed by the learned Presiding Officer, Maharashtra Waqf Tribunal, Aurangabad (for short,

'Tribunal') in Waqf Suit No.19/2011. By that order, the Tribunal had dismissed the suit instituted by the plaintiff.

3. In support of this Petition, Mr. Kudle strenuously contended that the property bearing Gat No.499 situate at Manjree, Taluka – Sangola, District – Solapur, (for short, 'suit property') is a waqf property. The plaintiff had instituted suit *inter alia* praying for declaration that the suit property is a waqf property; for declaration that the transaction made by defendant No.2 alienating the suit property in favour of defendants No.10 and 11 is null and void ab initio; for perpetual injunction restraining defendants No.1 to 9 from interfering in peaceful management of Dargah Ladle Peer situate at Manjeri, Taluka – Sangola, District - Solapur and from alienating the waqf property by gift, sale and mortgage etc.

4. The defendants resisted the suit *inter alia* contending that the suit property is not a waqf property. After considering the evidence on record, on 17.11.2014 the Tribunal dismissed the suit. Aggrieved by that decision, the plaintiff instituted C.R.A. under Section 83(9) of the Waqf Act, 1995 (for short, 'Act') in this Court. By order dated 3.5.2016, Civil Revision Application was

dismissed.

5. Mr. Kudle submitted that the order suffers from several errors of law apparent on the face of record. He invited my attention to the extract of register of alienated villages and land in Sangola Taluka, District – Solapur and in particular at Sr. No.257. He submitted that the names of Ladlesaheb Pir, Manager, Dadan Valad, Bahadur and Husen Valad Abdul Atar were recorded as far back as on 23.12.1861. He submitted that the defendants are not the descendants of these persons. They had no authority to alienate the suit property. He submitted that column No.4 records that the suit property is Class-II personal Inam land.

6. Mr. Kudle submitted that after abolition of Inam, the Government can resume the land and re-grant to the holder. He relied upon Section 5 of the Bombay Service Inams (Useful to Community) Abolition Act, 1953. He submitted that in any case it cannot be re-granted to the defendants. He has invited my attention to the order dated 29.3.2012 passed by this Court in C.R.A. No.167/2012 and in particular paragraph-2 thereof. In pursuance thereof, on 16.2.2013 the Tribunal disposed of

application Exhibit-39 made by the defendants seeking clarification as to who is Managing Committee of Dargah Ladle Peer, Manjri, Taluka – Sangola, District – Solapur registered at Waqf No.20/2008. The order dated 16.2.2013 was challenged in this Court by instituting W.P. No.4667/2013. By order dated 20.11.2013, this Court dismissed that Writ Petition.

7. Mr. Kudle submitted that the suit property is a waqf property. The Tribunal as also this Court, however, wrongly held that the suit property is not a waqf property. As the order suffers from several errors of law apparent on face of record, this is a fit case for reviewing the order thereby restoring C.R.A. for deciding it afresh on merits.

8. I have considered the submissions advanced by Mr.Kudle. I have also perused the material on record. The extract of register of alienated villages and land in Sangola Taluka, District – Solapur was also relied upon by the plaintiff at the time of hearing of C.R.A. and this is considered in paragraph-5. Apart from that the documents relied upon by the plaintiff, such as, Tippan Book dated 23/24.11.1988 at Exhibit-84 as also extract of register at Exhibits-87 and 91 wherein the

suit property was described as Class II personal Inam land, were also considered. In paragraph-8 it was observed thus :

“8. Mr. Sakhare relied upon Tippan Book dated 23/24.11.1988 at Exhibit-84. Tribunal has dealt with this document and observed that in that document nowhere it is mentioned that the suit land is a waqf property of Dargah Ladalepeer. Tribunal also considered the extract of register at Exhibits-87 and 91, wherein the property is described as Class-II personal inam land. In other words, the document does not record that the suit property is a waqf land. Tribunal therefore held that the suit property is not a waqf property and it is a personal inam. In paragraph-18, Tribunal has considered the documents produced by the defendants and in particular 7/12 extract of the year 1940-41 and 1949-1950. In 7/12 extract the property is recorded as 'Jat Inam' (personal inam). Thus after considering the material on record, Tribunal held that the property is not a waqf property. In view of the findings recorded in paragraphs-16 to 18 of the impugned order, I do not find any is made out for invocation of powers under Section 83(9) of the Act.”

9. Thus it cannot be said that the documents which are relied upon in the present Review Petition were not considered while dismissing C.R.A. on 3.5.2016. While dismissing C.R.A., the decision of Apex Court in the case of **M.L.Sethi Vs R.P.Kapur, 1972 (2) SCC 427** dealing with the scope of revision was also referred. After considering the material on record, I do not find that any case is made out for reviewing the order dated 3.5.2016.

10. In the case of **Kamlesh Verma Vs. Mayawati**, AIR **2013 SC 3301**, the Apex Court while considering scope of review 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 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."

11. Applying the tests laid down by the Apex Court in the case of **Kamlesh Verma** (*supra*), I do not find that any ground is made out for seeking review of the order. Hence, Review Petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)