

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

901 REVIEW APPLICATION (CIVIL) NO. 283 OF 2017
IN SA/323/1991 WITH RA/263/2017 IN SA/323/1991 WITH
CA/13824/2017 IN RA/263/2017

RAMRAO NILKANTHRAO PATIL DIED LRS SHOBHABAI AND OTHERS
VERSUS
DHONDJI@RAMESH NILKANTHRAO PATIL DIED LRS SHAKUNTALA
AND OTHERS

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Advocate for Applicants : Mr. Milind Patil
Advocate for Respondents 1B, 1C and 1D : Mr. R.N. Dhorde, Sr.
Counsel i/b. Mr. S.B. Ghatol-Patil
Advocate for Respondents 4A to 4C : Mr. Hemant Pawar

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CORAM : T.V. NALAWADE,J.
DATED : July 5, 2018.

ORDER :

1. Both the review applications are filed for recalling the decision given by this Court in Second Appeal No. 323/1991. Both the sides are heard.
2. This Court made query in Review Application No. 263/2017 and the learned counsel arguing for the applicants was asked as to how the application itself is tenable for that applicant. He was allowed to argue on other matter also including the merits of the matter. It is a fact that the suit was filed by Ramrao for partition. He was interested in getting the share in the property which was with his step mother Anusayabai. His mother was also party defendant in the said suit. The Trial Court dismissed the suit

filed as against Anusayabai and share was denied in the property which was with Anusayabai. Though relief was granted in respect of the property which was standing in the name of his real mother, the real mother did not challenge the said decision. Ramrao filed appeal to challenge the decision given in favour of Anusayabai and the said appeal also came to be dismissed. Ramrao took this decision to this Court by filing aforesaid second appeal and on merits, second appeal is dismissed. Thus, the decision of the Trial Court was not challenged by filing first appeal by the mother of Ramrao and so, there was no right to mother of Ramrao to seek review of the decision given in appeal filed by Ramrao.

3. The learned counsel for Ramrao submitted that this Court has not correctly interpreted the ratio of the Apex Court laid down in the case reported as **AIR 1983 SUPREME COURT 409 [Apoorva Shantilal Shah Vs. Commissioner of Income Tax, Gujrat I, Ahmedabad]**. He submitted that when Dhondaji was there as son of the father, Karta, who was effecting partition and no share was shown to be given to Dhondaji, the partition cannot be recognised in law. This Court is avoiding to make observations with regard to contention made about the mis-interpretation. The factual aspect of the matter is that said Dhondaji never challenged the partition which is considered by this Court. At the time of partition,

Ramrao was not in picture as he was not born. So, it is not open to the present petitioner to make submission on behalf of Dhondaji. From that practical angle, this contention cannot be considered. In any case, if this Court has not properly interpreted the aforesaid case of the Apex Court and due to that, has committed error in giving decision, then that can be corrected by higher Court in proper proceeding. The case was considered by this Court and interpretation of that case is made by this Court.

4. The learned counsel also submitted that the reasoning given by this Court for dismissal of the second appeal is not convincing. This contention cannot be covered by the scope of review. In the result, both the applications stand dismissed. Civil applications, if any, stand disposed of.

[T.V. NALAWADE, J.]

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