IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Civil Application No. 9996 of 2018
With
Civil Application No.9997 of 2018
In
Review Application Stamp No.21009 of 2018
In
Second Appeal No.14 of 2012

Vithoba s/o Babaji Hinge
Deceased through legal
representatives. **.. Applicants.**

Versus

Anusayabai @ Laxmibai Baburao Navle,
Deceased through legal representatives. **.. Respondent.**

Shri. Naseem R. Shaikh, Advocate, for applicants.

Shri. A.B. Dhongade, Advocate, for respondent Nos.1-A and 1-B.

Coram: T.V. NALAWADE, J.

Date: 6 AUGUST 2018

ORDER:

1) The application is filed for review of the decision given in Second Appeal No.14/2012. There is some delay in filing the review application. Considering

the contents in the application and the submission made the delay is condoned. Civil Application No.9996/2018 is allowed and disposed of. Both the sides are heard.

2) The suit filed against the present applicants for partition was dismissed by the trial Court. But the first appellate Court decreed the suit by holding that there was no partition and the plaintiff was entitled to get his share separated. This Court confirmed the said decision in the second appeal. No substantial question of law was found to be involved.

3) Learned counsel for the applicants submitted that when some properties were not ancestral, this Court has made mistake in mentioning that the property like Survey Nos.37/1, 37/3 which were subsequently given Gat number were ancestral properties of Tukaram and Babaji. He submitted that this Court has held that on the basis of revenue record it cannot be inferred that there was partition. He placed reliance on the following reported cases.

(1) **2007(1) Mh.L.J. 747 (Shekoji Bhimrao v. Motiram Maruti Martha)**;

(2) **AIR 1995 SC 1728 (Digambar Adhar Patil v. Devram Girdhar Patil)**;

(3) **AIR 2005 SC 592 (B.C.C.I. v. Netaji Cricket Club)**.

4) The question involved was whether there was joint family property and the plaintiff is entitled to the share in the property. Whether this property was ancestral or it was acquired from the income of the ancestral property is required to be considered by appreciating the material before it. If there is sufficient nucleus for giving income and from the nucleus property can be purchased, that property can also be considered for partition. The reasoning needs to be read in accordance with that concept.

5) The entry in the revenue record like mutation made on the basis of report given, may be oral, is definitely relevant in a case filed for partition. Relevancy is one thing and drawing inference on given facts is other thing. Only on the basis of one revenue entry Court is not bound to draw inference of partition. The relevant facts of the matter are considered and this Court has refused to draw inference on the basis of one mutation entry.

6) If the present applicant, appellant of the second appeal feels that this Court has committed error in appreciating the material and also drawing inference then the decision of this Court needs to be challenged in the Supreme Court. The submissions made cannot be considered within the scope of review. The review application stands dismissed. Civil Application No.9997 of 2018 stands disposed of.

7) Learned counsel for the applicants requested for some time to approach the Apex Court. When the second appeal was dismissed, no such time was given and so while deciding the review application no such time can be given. The prayer is rejected. Authenticated copy is allowed to both the sides.

Sd/-
(T.V. NALAWADE, J.)

rsl