

***IN THE HIGH COURT OF BOMBAY AT GOA***  
***CIVIL APPLICATION (REVIEW) NO. 21 OF 2015***  
***IN***  
***FIRST APPEAL NO.146 OF 2010***

Ramnath Narayan Pai and Anr. ... Applicants

Versus

Eknath Narayan Pai & Ors. .... Respondents

Mr. N. Sardesai, Senior Advocate with Mr. D. Shirodkar and Ms. G. Kamat, Advocates for the Applicants.

Mr. U. R. Timble and Ms. Y. Mandrekar, Advocates for Respondent Nos.1 to 4.

***Coram : N.M. Jamdar &  
Prithviraj K. Chavan, JJ.***

***Date : 27 June 2018.***

**P.C.:**

By this Civil Application, the Applicants who are the Appellants in the First Appeal No.146 of 2010 which was disposed of by the Division Bench of this Court ( *Reis & Wadane, JJ* ) by judgment and order dated 16 September 2015, seek to review the judgment and order.

2. The First Appeal arose from the judgment and order passed by the learned Civil Judge Senior Division, Vasco, in Special Civil Suit No.20/2005/A on 26 July 2010. The learned Judge had partly decreed the suit instituted by the Plaintiffs. The composition of the Division Bench is now no longer available, the review application is placed before us.

3. The case of the Respondents/Plaintiffs was that one Narayan Pai had four sons and seven daughters. The Plaintiff Nos.1, 3 and Defendant No.1 are the sons of Narayan and Plaintiff No.2 is the wife of Plaintiff No.1. The Defendant Nos.3 to 9 are the daughters of Narayan. Narayan originally hailed from Honnavar from Karnataka State. Narayan and his wife came to Goa and settled down in Goa during the Portuguese regime. The children were born and brought up in Goa. Narayan purchased certain immovable properties. Thereafter, he started business of grocery and a timber depot and the business was flourished. Various properties then purchased by Narayan. The Defendant No.1 looked after the rented properties and received some funds. After the death of Narayan, the father, the brothers continued their joint business and purchased some properties. Dispute arose between the brothers.

4. It was contended by the Plaintiffs that all these properties were joint Hindu family properties purchased from the joint Hindu family funds and the Plaintiff Nos.1, 3 and Defendant Nos.1 and 3 to 9 have equal shares as members of Hindu Undivided Family. The present Applicants contested the suit and contended that the properties were in the name of Defendant No.1 and he is entitled to the same and there was no joint Hindu family and consequently no joint Hindu family properties as well. On these pleadings, the learned Civil Judge framed the issues as to whether the Plaintiffs and Defendants are entitled for partition and allotment of the joint undivided Hindu family business, amongst the other issues.

5. The discussions of the learned Civil Judge and the written statement of the Applicants, shows that the central question was regarding the existence of joint Hindu family and joint Hindu family business and the properties. The Respondents/Plaintiffs have based the claim on the existence of the joint Hindu family and joint Hindu family properties describing the Defendant No.1 as a *Karta* of the joint family, after the death of the father. This position was denied by the Applicants stating that the joint Hindu family was never constituted and the Defendant No.1 was never acted as a *Karta*. The learned Civil Judge on the basis of existence of a joint Hindu family as

well as the joint Hindu family property/business, partly decreed the suit and directed that the partition shall be effected of the joint family properties as per the shares sought for and also regarding the joint family business. Being aggrieved, the Applicants filed the First Appeal No.146 of 2010 which was dismissed by judgment and order under review.

6. We have heard Mr. N. Sardesai, learned Senior Advocate for the Applicants and Mr. U. R. Timble, learned Advocate for Respondent Nos.1 to 4.

7. Mr. Sardesai, submitted that there is a fundamental error committed by the Court while exercising the Appellate jurisdiction in not considering the basic aspect of existence of the joint Hindu family and joint Hindu family property. Mr. Sardesai, submitted that though elaborate arguments were advanced on this aspect, they do not find reference in the judgment. He submitted that the entire foundation of the Applicants' case was on the non-existence of the joint Hindu family and joint Hindu family property, which did not find mention in the impugned order. Mr. Sardesai, submitted that since the crux of the matter has not been decided at all and the arguments thereupon are not reflected, the Applicants will also be handicapped in pursuing

the matter in higher Court and the order needs to be reviewed.

8. Mr. Timble, on the other hand submitted that there is a clear finding by the Court that there was a nucleus for the purchase of the joint family properties. The father of the Plaintiffs and the Defendants, after settling in Goa has purchased various properties, which were constituted nucleus for the sons thereafter to continue the business jointly. He submitted that this point having been considered, no case is made out to exercise review jurisdiction. The learned counsel also submitted that even assuming there is no joint Hindu family or joint Hindu family property, after the death of the father, the sons and daughters are entitled their shares by way of succession.

9. The scope of review jurisdiction is well settled. Under the garb of review, the appeal cannot be reargued. But if there is an error apparent on the record, review power can be exercised. As far as the contention of Mr. Sardesai, that elaborate arguments were made but are reflected in the decision, it is not possible for us to conclude finally as to what transpired before the other bench, but we do note that arguments are cursory mentioned. We also note that the review application was filed immediately after the judgment was pronounced before the same bench. The same bench issued notice to the

Respondents and after hearing the learned counsel for the Respondents an interim order based on the statement of the learned counsel for the Respondents was granted. Further, since the arguments regarding the existence of joint Hindu family and joint Hindu family business, being the foundation of the Applicants' case, it is difficult to believe that they would be given up in the appeal.

10. Mr. Timble has drawn our attention to the paragraph 50 of the judgment dated 16 September 2015, which according to Mr. Timble is a conclusion regarding the existence of nucleus and joint family. But the main question sought to be raised by the Applicants as to whether there would be any joint family, as contemplated under the Hindu law, only between the father and the sons, and the acquisition of the joint family property only within two generations can be termed as joint Hindu family business, has not been referred to at all. It is only after this foundation is established, a concept of joint Hindu family, co-parcenes and partition would arise. Mr. Timble sought to urge that there exists a joint family as well as the joint family property by referring to certain properties of the grandfather. These properties are from the maternal side. Considering this position, since this crux of the matter has not been considered, which is obligatory while exercising the powers of the First Appellate Court, an error

apparent on record has occurred for which the decision will have to be recalled and the appeal will have to be heard again.

11. In these circumstances, the Civil Application for review is allowed. The judgment and order dated 16 September 2015 stands recalled. First Appeal No. 146 of 2010 stands restored to file.

12. Registry to add the First Appeal to the board of final hearing in the week commencing from 9 July 2018.

13. Consequent to the revival of the First Appeal, the interim order dated 18 June 2012 operating during the pendency of the appeal, stands restored.

***Prithviraj K. Chavan, J.***

***N.M. Jamdar, J.***