

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION (STAMP) NO.23583 OF 2018
IN
SECOND APPEAL NO.239 OF 1996

Ramchandra Laxman Dalvi (Since Deceased),
Through LRs.:-

Sunanda Ramchandra Dalvi and Ors. Petitioners

V/s.

Harishchandra Krishna Dalvi and Ors. Respondents

Mr. Tuljapurkar, Senior Counsel, a/w. Mr. Sunil Karandikar and
Mr. Jimmy Avasia, I/by Mr. Suresh M. Sabrad and Ms. Sonal Dabholkar,
for the Petitioners.

Mr. G.N. Salunkhe, a/w. Mr. P.A. Pol, Mr. Ranjit S. Hatkar and Mr. Pravin
Mane, for Respondent Nos.1 to 4.

Mr. Uday P. Bobade, I/by Mr. Vivek Sharma, for Respondent Nos.5 and 6.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 12TH OCTOBER, 2018.

P.C. :

1. Heard Mr. Tuljapurkar, learned Senior Counsel, for the Review
Petitioners; Mr. Salunkhe, learned counsel for Respondent Nos.1 to 4;
and Mr. Bobade, learned counsel for Respondent Nos.5 and 6.

2. This Petition is preferred for review of the 'Judgment' dated 2nd
August, 2018, delivered by this Court in Second Appeal No.239 of 1996.

It is submitted that, before the first Appellate Court, at page No.12 in para No.8, it was specifically recorded as follows :-

“It was not disputed before me that, in the absence of any documentary evidence and also in the absence of any specific pleading to that effect, there was no other property of family of Laxman Hari Dalvi and Krishna Laxman Dalvi, except the land bearing Survey No.26/1. It is also not in dispute before me that, the suit lands were tenanted lands since the time of Laxman Hari Dalvi, as he was very much alive on 1st April 1957, under Section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948.”

3. According to learned Senior Counsel for the Review Petitioners, this is a concession, which is given by the Appellants before the first Appellate Court, making a statement on record that there was no other property of the family of Laxman Hari Dalvi and Krishna Laxman Dalvi, except the land bearing Survey No.26/1. In view of this concession, neither the first Appellate Court, nor this Court was right in decreeing the Suit for partition in respect of all the four lands. It is urged that, at the most, the Suit could have been decreed only in respect of the land bearing Survey No.26/1 and not in respect of the other lands. According to him, therefore, this is a fit case where Review Petition needs to be allowed.

4. Learned Senior Counsel for the Review Petitioners has, in this

respect, relied upon the Judgment of the Division Bench of the Hon'ble Supreme Court in the case of *Special Land Acquisition Officer, Ahmedabad Vs. Pari Kashavlal Jamnadas and Ors.*, (1987) 3 SCC 306, to submit that, “when a concession is on a question of fact, it cannot be disregarded”. Further, he has also relied upon another Judgment of the Hon'ble Supreme Court in the case of *N. Jayaram Reddy and Anr. Vs. Revenue Divisional Officer and Land Acquisition Officer, Kurnool*, (1979) 3 SCC 578, to submit that, “when a plea is willfully abandoned by a party at the relevant time, it cannot be allowed to be raised at the convenience of that party to the prejudice of the other party.”

5. Learned Senior Counsel for the Review Petitioners has then relied upon the two Judgments of the Hon'ble Apex Court; in the case of *Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others*, AIR 2005 SC 592, and in the case of *Usha Bharti Vs. State of Uttar Pradesh and Others*, AIR 2014 SC 1686, relating to the scope of the jurisdiction of the Court in review, as laid down in Section 114 and Order 47 Rule 1 of the CPC, wherein it was held that, “this jurisdiction is wide enough to include a misconception of fact or law by a Court or even by an Advocate. An application for review in such cases may be necessitated by way of invoking the doctrine *actus curiae neminem gravabit*”.

6. Learned Senior Counsel for the Review Petitioners has then also

relied upon the Judgment of the Hon'ble Apex Court in the case of *Moran Mar Basselios Catholicos and Another Vs. Most Rev. Mar Poulose Athanasius and Others*, AIR 1954 SC 526, to submit that, the words 'any other sufficient reason', used in Order 47 Rule 1 of CPC, necessarily also include the reason even when the Court has failed to take into consideration the concession, which was recorded by the first Appellate Court in its Judgment.

7. Lastly, learned Senior Counsel for the Review Petitioners has relied upon the landmark Judgment of the Hon'ble Apex Court in the case of *State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another*, AIR 1982 SC 1249, to submit that, "when an express concession has been made and it is recorded in the judicial proceedings, then it cannot be questioned in any other proceedings, except before the concerned Court only, by bringing to its notice that the concession was not recorded properly; otherwise, the Judges record is conclusive in its nature.

8. In my considered opinion, there cannot be any dispute about the legal propositions laid down in these Judgments, on which learned Senior Counsel for the Review Petitioners has relied upon. However, in the facts of the present case, none of them can be invoked or applied; because, whatever observations made by the first Appellate Court, which are reproduced supra, are more than sufficient to show that there was

no concession made as such in any way. It was the observation made by the first Appellate Court that, it was not disputed before him that there was no other property of the family of Laxman Hari Dalvi and Krishna Laxman Dalvi, except the land bearing Survey No.26/1, and this fact or this finding was recorded, considering the absence of any documentary evidence and in the absence of any specific pleadings.

9. In addition to that, it must be remembered that, this observation was made in respect of the land owned by the family of Laxman Hari Dalvi and his son. As regards that family, it was conceded that, the said joint family of Laxman Hari Dalvi and Krishna Laxman Dalvi was having the only land bearing Survey No.26/1, but so far as Laxman himself was concerned, the pleadings and evidence all along, clearly go to show that he was tenant in respect of the other lands bearing Survey Nos.72/8 and 36/8. In that context only, the issue relating to the applicability and interpretation of Section 40 of the Bombay Tenancy and Agricultural Lands Act was raised before the first Appellate Court and before this Court also and the specific substantial questions of law were also framed to that effect. After considering the application of those provisions, the first Appellate Court and this Court has decreed the Suit in respect of the other lands also, in addition to the land bearing Survey No.26/1.

10. Therefore, there is absolutely no misconception of fact as regards

the understanding either on the part of the Trial Court or this Court. There is also no concession of fact, which is recorded as such, and if at all there is any concession of fact, it is only in respect of the land owned by the joint family of Laxman Hari Dalvi and Krishna Laxman Dalvi. So far as the lands, which were in possession of Laxman Hari Dalvi alone as a tenant, there was no such concession and, accordingly, both the first Appellate Court and this Court having decided the said issue, no ground is made out at all for review of the said Judgment.

11. Review Petition, therefore, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]