

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION (ST.) NO. 26121 OF 2018
WITH
SECOND APPEAL NO. 374 OF 2018
WITH
CIVIL APPLICATION (ST.) NO. 26124 OF 2018**

Kishor Tulshiram Mantri	...	Petitioner
V/s.		
Dilip Janak Mantri	...	Respondent

- Mr.Rameshwar Totala i/b. Mr.Girish R. Agrawal for Petitioner.
- Ms.Seema Sarnaik for Respondent Nos.1 and 2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 10th OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the Review Petitioner and learned counsel for Respondent Nos.1 and 2.

2] This Petition is preferred for review of the 'Judgment and Order' dated 14/08/2018 passed by this Court in Second Appeal No.374 of 2018, by contending *inter-alia* that in the written statement, the Petitioner-Defendant has taken a specific contention that the partition of the joint family properties had already taken place during

the life time of Petitioner's father – Tulshiram Mantri. However, neither the trial Court has framed the issue to that effect nor any finding is given to that effect in the Judgment of the trial Court. In the First Appeal Memo, therefore, this contention was raised but the First Appellate Court has also not framed any point for determination to that effect and no finding is given. Again in in the Second Appeal Memo also, the issue was raised about previous partition. However, at the time of hearing of the Second Appeal, this issue was not raised and as a result thereof, the judgment is passed without considering this aspect and therefore, the 'Judgment and Order' is required to be reviewed.

3] To substantiate this submission, learned counsel for the Petitioner has relied upon the judgment of the Hon'ble Apex Court in the case of *Board of Control for Cricket in India (BCCI) & Anr. Vs. Netaji Cricket Club & Ors.*, (2005) 4 SCC 741, wherein it was held that the review can be allowed if there is sufficient reason to do so and what constitutes “sufficient reason”, would depend on the facts and circumstances of each case.

4] Learned counsel for Review Petitioner has also relied upon the judgment of the High Court of Calcutta, in the case of *Tinkari Sen*

and Ors. Vs. Dulal Chandra Das and Ors., MANU/WB/0122/1967, wherein it was held that, “even if the mistake is on the part of the counsel and it has crept in by reason of an oversight on the part of Court, that will also be subject for review and it can be allowed on that ground”.

5] According to learned counsel for the Petitioner, therefore, this is a fit case, where this Court should review its own judgment and order.

6] However, in the considered opinion of this Court, if the Petitioner has taken up this case of previous partition in the written statement itself, then question arising for consideration is why till the entire trial was over, he has not brought to the notice of the trial Court that this issue was required to be framed and even after the judgment and order of the trial Court, at the time of hearing of the First Appeal, the said issue was not pressed into submission. Not only that, in the Second Appeal also, when the matter was argued at length by learned counsel for the Petitioner, this contention was not raised at that both the trial Court and the Appellate Court had committed an error in not considering this case of previous partition and therefore, the matter is required to be remanded.

7] According to learned counsel for the Petitioner, it was the duty of the Court to frame such issue. It may be true, but then it is also the duty of the learned counsel for the parties to bring to notice of the Court, if a particular issue has not been framed or if a particular issue has become redundant. If neither the parties nor their Advocates are performing the duties on their part at all the three stages and shifting entire blame on the Court for review of the Judgment, at this belated stage, the Court cannot review the Judgment in the second Appeal

8] In such circumstances, after the decision of the Second Appeal, it is too late a stage to raise this contention and to reopen the entire Second Appeal or the suit itself. In the facts and circumstances of the case, it cannot be allowed and therefore Review Petition stands dismissed.

9] In view of disposal of the Review Petition, nothing survives in the Civil Application, hence stands disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]