

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**915 REVIEW APPLICATION (CIVIL) NO.195 OF 2014
IN SA/310/2013**

LATABAI BABASAHEB ANDHARE AND OTHERS

VERSUS

VINAYA VILAS KESKAR AND OTHERS

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Mr. P.P. Mandlik, Advocate h/f Mr. A.S. Gandhi, Advocate for the applicants

Mr. S.G. Chapalgaonkar, Advocate for the respondent No.1

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 24th JANUARY, 2019

PER COURT :

1 Present review application has been filed by the original appellant in the Second Appeal to review the Judgment and Decree in Second Appeal No.310 of 2013 and 311 of 2013.

2 The background of the case is that, present respondent No.1 was the original plaintiff. She filed a suit for partition and separate possession before Civil Judge Junior Division, Bhoom on 29.07.2006 bearing R.C.S. No.462/2003. The said suit was dismissed. It appears that the defendants therein had also filed the counter claim. The same was also

dismissed. Thereafter, the original plaintiff filed R.C.A. No.180/2006 and along with the same one more R.C.A. No.176/2006 was filed by the original defendant Nos.3, 5 and 6 challenging the dismissal of the counter claim. Both these appeals were heard together by learned Principal District Judge, Osmanabad and both appeals were allowed. It was declared that the plaintiff and defendant Nos.3 to 6 each have 1/7th share in the suit property. Defendant Nos.1 and 2 together were held to be entitled to get 1/7th share. Present applicants were the appellants-original defendant No.7, 1 and 2. This Court after hearing both sides dismissed the Second Appeal on the ground that they do not give rise to any substantial question of law on 05.02.2014. Now, those appellants have filed this application for review.

3 Heard learned Advocate Mr. P.P. Mandlik holding for Mr. A.S. Gandhi for the appellants. Notice is not even necessary to the other side.

4 It was submitted that certain facts were not noted by this Court, if they would have been considered, the Second Appeal might have been admitted. Again the facts have been reiterated in the application and it is stated that the facts which were not considered are that, ancestor Krishnaji had kept 80 Ares land for him and had given 81 Ares land to his brother Uddhav. Krishnaji had expired in the year 1983.

He was survived by one son, five daughters and the widow. However, his son Nandkishor expired in the year 1995 and Krishnaji's widow Mangalabai expired in 2001. What was not considered by this Court was that, after death of Krishnaji original defendant Nos.1 and 2, who are the widow and daughter of Nandkishor, had executed an agreement to sell on 25.01.2001 for a valuable consideration and thereafter the suit came to be filed in 2003. The property was ancestral property. The shares were also not calculated by the learned First Trial Court and therefore, those aspects ought to have been considered.

5 The perusal of the order passed by this Court on 05.02.2014 would show that the fact of death of Krishnaji and how the succession would have gone has been considered. Now, it is to be noted that defendant No.7 was the purchaser of the suit property from defendant Nos.1 and 2. She has tried to claim that the agreement to sell was entered into 2001. In fact, even if for the sake of argument if it is accepted that such agreement had taken place in 2001, yet the agreement to sell will not create any kind of interest in favour of defendant No.7 in the suit property. The sale is admittedly after the suit was instituted. Therefore, that fact though not noted down in the order was not required to be taken into consideration at all. All the other facts

have been considered and taking into consideration when the partition was opened and the relevant law it can be said that the calculation, that has been done by the First Appellate Court in respect of the share of the parties, is correct. Under such circumstance, there was no error apparent on the face of the order of this Court. It does not call for any kind of review.

6 The learned Advocate appearing for the applicants submits that the First Appellate Court did not consider that whatever will come to the share of defendant Nos.1 and 2 should be then adjusted towards defendant No.7 since they have sold the property to defendant No.7. He prayed that the decree be modified to that extent to give liberty to the applicants to make submission and prayer that the share of defendant Nos.1 and 2 should be adjusted to defendant No.7. As regards actual effect of partition is considered, it appears that it has not taken place yet. The praecipe would be sent to the Collector for effecting partition. Under such circumstance, all the legal remedies may be open for all the parties.

(Smt. Vibha Kankanwadi, J.)

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