

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

Review Application (Civil) No. 078 of 2019
(In Second Appeal No. 0924 of 2005)

District : Beed

Maruti s/o. Lahanu Shinde
(Died) through L.Rs.,

Laxman s/o. Maruti Shinde,
Age 51 years,
Occupation : Agriculture,
R/o. Karchundi,
Taluka & Dist. Beed
& others.

.. Applicants
(Original
defendants)

versus

Dhondiba s/o. Nagu Jagtap,
Through his Mukhtyar Aam
Shri Piraji s/o. Dhondiba
Jagtap

Deceased through L.Rs.,
Sheshrao s/o. Dhondiba Jagtap,
Age 73 years,
Occupation : Agriculture,
R/o. Karchundi,
Taluka & Dist. Beed
& others.

.. Respondents/
Non-applicants
(Original
plaintiffs)

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*Mr. Rajendra G. Hange, Advocate, for applicants
no.1A to 1G (i.e. respondents no.1A to 1G in SA).*

*Applicants no.2, 3 and 4 are respondents
no.2, 4 & 5, respectively in SA.*

*Mr. Dhananjay P. Deshpande, Advocate, for
non-applicants no.1A to 1D, 1F to 1H (i.e. appellants
no.1A to 1D, 1F to 1H in SA)*

*Mr. R.A. Deshmukh, Advocate, for non-applicants
no.3A to 3D (i.e. respondents no.3A to 3D in SA)*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 24TH JULY 2019

ORAL ORDER :

01. Present review petition has been filed by respondents no.1A to 1G in Second Appeal No. 924 of 2005 for reviewing the judgment and order dated 26-04-2019, passed in the said Second Appeal.

02. Heard learned Advocate Mr. R.G. Hange for the review petitioner. Heard learned Advocate Mr. V.D. Sapkal for non-applicants no.1A to 1D, 1F to 1H i.e. original appellants in the second appeal.

03. It has been submitted on behalf of the review petitioners, that a statement was made by the learned Advocate appearing for the appellants on 18-09-2018, that he would supply paper-book, yet, till the date of final hearing i.e. 15-03-2019, review petitioners did not receive the paper-book as it was not provided by the appellants; final hearing ought not to have taken place on that day. He further submitted that the fact was not brought to the notice of this Court, that the present review petitioners had filed evidence to show that they are the owners of the suit property. That evidence was in the

nature of *Khasra Patrak*. So also, admissions were given by the original appellants / plaintiffs in respect of the fact that the present review petitioners / defendants' predecessor were owners of the suit property. Taking into consideration those documents, the presumption under Section 110 of the Evidence Act ought not to have been invoked.

04. Per contra, learned Advocate appearing for the original appellants submitted that none of the grounds those have been mentioned in the review petition can be said to be under Order XLVII of the Code of Civil Procedure, 1908. This Court cannot sit as an appellate court on its own judgment under the guise of review. Furthermore, though the hearing had taken place on 15-03-2019, it was reserved and the judgment has been pronounced on 26-04-2019. There was no attempt on the part of the review petitioners to submit their arguments in the meantime. Under such circumstance, the review is not maintainable and deserves to be dismissed with costs. It was also submitted that the second appeal was admitted long back and the substantial question of law which was framed on 28-04-2009 has been considered by this Court while deciding the matter.

05. The first and the foremost point i.e. in respect of supply of paper-book, the *farad-sheet* of 14-03-2018 shows that the paper-book and decree form

has been supplied. It appears that the learned Advocate for the review petitioners did not collect the said paper-book. Same note has been continued on 15-03-2019 also, stating that the private paper-book has been supplied by the learned Advocate for the appellants. Another point that can be considered is that, on that day, arguments on behalf of respondents no.3A to 3D were advanced by learned Advocate Mr. R.A. Deshmukh. He did not make any complaint regarding non-supply of paper-book. Under such circumstance, when the paper-book was already supplied on 14-03-2018, there was no question of adjourning the matter on 15-03-2019. Learned Advocate Mr. Hange, representing the review petitioners, is now making statement that he has not received the paper-book and as per the High Court Appellate Side Rules, it is to be supplied. When the paper-book was on record, there was no hurdle for hearing of the matter. Furthermore, in the entire review petition, it is not stated as to why the learned Advocate was absent on that day. If he had not received the paper-book, he could have definitely made a request on that day also and seeking assistance from the Court for getting the paper-book, he could have got the matter adjourned and on the adjourned date, he could have made his submissions. Furthermore, as has been rightly pointed out, the judgment was reserved on 15-03-2019 and it was pronounced on 26-04-2019; there was no attempt in the

meantime, on behalf of the review petitioners, to make submissions. Under such circumstance, that cannot be a ground for review now.

06. Now, as regards other aspects are concerned, that some documents and admissions have not been considered by this Court in its judgment, these grounds cannot be the point of review, as contemplated under Order XLVII of the Code of Civil Procedure. If at all the review petitioners has right to agitate against the said fact, it is elsewhere.

07. In the light of above, the review application is merit-less and deserves to be dismissed. Hence, the review application is dismissed with costs.

(Smt. Vibha Kankanwadi)
JUDGE

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