

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Review Petition (Stamp) NO. 5102 OF 2016
IN
Second Appeal NO. 609 OF 2011

Mr. Sahaji Ragunath Kalange
and another

...Petitioners

Versus

Sulabai Shivram Kalange (deceased)
and others

...Respondents

....

Mr. Vaibhav Gaikwad, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 19th AUGUST, 2019

P.C.

1. Not on board. At the request of Mr. Gaikwad taken up for admission.
2. Heard Mr. Vaibhav Gaikwad, learned counsel for the petitioners, at length.
3. By this Petition under Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the petitioners have sought review of the order dated 12.6.2013 passed by this Court in Second Appeal No.609/2011. That appeal was instituted by the defendants challenging the judgment and decree dated 30.9.2003 passed by the learned Civil Judge, Junior Division, Wai in Regular Civil Suit No.314/1979 as also the judgment and decree dated

16.7.2011 passed by the learned District Judge-3, Satara in Civil Appeal No.286/2005. By these orders, the Courts below decreed the suit instituted by the respondents/plaintiffs and directed the defendants to handover possession of the agricultural lands bearing Gat Nos.95, 178, 308, 342, 13, 14, 380 as also house properties as more particularly described in paragraph 1B of the plaint.

4. In support of this Petition, Mr. Gaikwad raised following contentions :

i. In the sale deed dated 5.12.1986, Gat No.108 was wrongly referred instead of Gat No.308.

ii. By judgment and decree dated 24.3.2015, Regular Civil Appeal No.26/2004 preferred by the plaintiffs was dismissed. He invited my attention to the findings recorded by the learned District Judge against point No.1. Point No.1 and the finding recorded thereon read thus :

Sr. No.	Point	Answer
1	Whether plaintiffs-appellants proved that sale deed dt. 5/12/1986 executed by deceased Shivram with respect to the suit lands block Nos.232/1, 155, 308, 353, and 368 of village Kalangwadi, Tal. Wai was executed by deceased Shivram under the influence of liquor and without consideration ?	No.

5. The learned District Judge held that the plaintiffs did not establish that the sale deed dated 5.12.1986 executed by deceased

Shivram with respect to the suit lands Gat Nos.232/1, 155, 308, 353, and 368 of village Kalangwadi, Tal. Wai was executed by deceased Shivram under the influence of liquor and without consideration.

6. Mr.Gaikwad submitted that unfortunately though point as regards wrong mentioning of Gat number in the sale deed dated 5.12.1986 was specifically raised in the District Court, the same was however not raised at the time of hearing of the Second Appeal. He submitted that as there are several errors of law apparent on the face of record in the order under review, Review Petition deserves to be allowed.

7. I have considered the submissions advanced by Mr.Gaikwad. I have also perused the material on record. As mentioned earlier, the Courts below have decreed the suit instituted by the respondents/plaintiffs. The Courts below directed the defendants to hand over possession of the agricultural lands bearing Gat Nos.95, 178, 308, 342, 13, 14, 380 as also house properties as more particularly described in paragraph 1B of the plaint. A perusal of the order under review shows that the case of the plaintiffs was that Shivram (husband of plaintiff No.1 and father of plaintiff No.2), defendant No.2 Raghunath and defendant No.3 Parshuram were real brothers. Defendant No.3 Parshuram had instituted R.C.S. No.236/1978 against defendant No.2 Raghunath and deceased Shivram for partition of the joint family properties. That suit was compromised and accordingly

partition was effected. In that partition, the properties described in paragraphs-1A and 1B came to the share of Shivram. It was the case of the plaintiffs that the sale deed dated 5.12.1986 executed by Shivram in favour of defendants No.1 and 2 was void. Defendants No.1 & 2 took possession of the property sold under that sale deed illegally. The plaintiffs, therefore, instituted suit for declaration that the sale deed executed by the Shivram on 5.12.1986 was illegal.

8. After appreciating the evidence on record, the Courts below held that the plaintiffs failed to establish that the sale deed executed by the Shivram on 5.12.1986 was illegal. The Courts below also held that the defendants have no legal right to retain the possession of the properties.

9. The reliance placed by Mr. Gaikwad on the decision dated 24.3.2015 passed by the learned District Judge-3, Satara in R.C.A. No.26/2004 does not advance the case of the defendants for more than one reason. In the first place, it is not disputed that the appeal preferred against that decision is pending in this Court. Secondly, the finding recorded by the learned District Judge in that decision against point No.1 as also the decisions rendered by the Courts below of 30.9.2003 and 16.7.2011 also show that the Courts below held that the plaintiffs failed to establish that the sale deed executed by Shivram dated 5.12.1986 was illegal.

10. Insofar as the contention that Gat No.308 was wrongly mentioned in the sale deed dated 5.12.1986 is concerned, a perusal of the order dated 12.6.2013 shows that no such contention was advanced before this Court during the course of hearing of the Second Appeal. Thus, Review Petition does not make out any ground for review.

11. In the case of **Kamlesh Verma Vs. Mayawati, AIR 2013 SC 3301**, the Apex Court has considered the scope of review and has observed thus:

“The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of C.P.C. ”

12. Applying the tests laid down by the Apex Court in **Kamlesh Verma** (supra) to the facts of the present case, no case is made out. Hence, Review Petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)