

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Review Petition (Stamp) NO. 33723 OF 2015

IN

Second Appeal NO. 611 OF 2007

a/w

Writ Petition No.4068 OF 2000

Ashok Krishnaji Sawant
(since deceased) through L.Rs.
1(a) Amita Ashok Sawant
and others

...Petitioners

Versus

Kamalakar Atmaram Surve
and others

...Respondents

....

Mr. Sanskar Marathe, Advocate for Applicants No.1(a) to 1(d).
Mr. S.M. Kazi, Advocate for Respondent No.3.

....

CORAM : R. G. KETKAR, J.

DATE : 19th AUGUST, 2019

P.C.

1. Not on board. By consent taken up for admission.
2. Heard Mr. Sanskar Marathe, learned counsel for the applicants and Mr. S.M. Kazi, learned counsel for respondent No.3, 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 16.6.2010 passed by this Court in Second Appeal No.611/2007 along with Writ Petition

No.4068/2000. By that order, the Second Appeal as also the Writ Petition were dismissed. Second Appeal was filed challenging the judgment and decree dated 20.1.2005 passed by the learned 2nd Joint Civil Judge, Junior Division, Ratnagiri in Regular Civil Suit No.87/1995 as also the judgment and decree dated 11.5.2007 passed by the learned District Judge, Ratnagiri in Regular Civil Appeal No.25/2005. By these orders, the suit instituted by the plaintiffs for declaration and perpetual injunction was dismissed. Writ Petition No.4068/2000 was instituted challenging the order passed by the Maharashtra Revenue Tribunal, Mumbai dated 26.6.1997. The landlord had filed the proceedings under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, 'Act') *inter alia* contending that the respondents were not tenants in respect of entire land. The Courts below dismissed the suit instituted by the plaintiffs. Insofar as the proceedings filed under Section 70(b) of the Act are concerned, the Authorities below dismissed the application filed by the landlord for declaration that the respondents are not the tenants of the entire land.

4. In support of this Petition, Mr. Marathe strenuously contended that this Court proceeded to hold that the respondents were the tenants on the basis of registered Kabulayat dated 30.11.1936. He submitted that in fact in paragraphs-13 and 15 of the trial Court's judgment dated 20.1.2005 in R.C.S. No.87/1995, the learned trial

Judge categorically held that the document at Exhibit-114 dated 30.11.1936 shows that it was a permanent Swamitva Deed. He relied upon the decision of Maharashtra Revenue Tribunal in **Shankar Mahadu Patil of Khandake, Taluka Bhusaval Vs. Tapabai w/o Sampat Bhil of Bhusawal and others (Tenancy Appeal No.837/1960) decided on 6.4.1961**, reported in **Volume IX Tenancy Law Reports 236** to contend that even though the words 'Bhade-Patta' and 'Swamitwa' are used, such document does not create the relationship of landlord and tenant between the parties. The document by which the transaction is made is not a lease under the Act. He, therefore, submitted that as the decision in Second Appeal and Writ Petition proceeds on the premise that the respondent is the tenant on the basis of Swamitwa Deed dated 30.11.1936, the order under review suffers from error apparent on the face of record.

5. On the other hand, Mr. Kazi supported the order under review and submitted that no ground is made out.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. It is no doubt true that in the order dated 20.1.2005 in R.C.S. No.87/1995, the learned trial Judge has referred to the document dated 30.11.1936 as a permanent Swamitva Deed in paragraphs-13 and 15. As against this, the learned District Judge in

paragraph-3 observed that the defendants predecessor constructed a house in the suit property under a registered Kabulayat made on 30.11.1936. Even in paragraphs-5 and 9, the learned District Judge referred to the Kabulayat. In paragraph-9, the learned District Judge after considering the Kabulayat specifically held that entire land i.e. i.e. Survey No.208, Hissa No.1/2 was given on permanent lease by the plaintiffs predecessor to that of the defendants predecessor and one Vasant Rao Deshpande. After considering the Kabulayat at Exhibit-114 as also the sale deed dated 9.7.1940 at Exhibit-115, the learned District Judge observed that it does not lie in the mouth of the plaintiffs to contend that the tenancy rights were created and could be obtained by the defendants only in respect of the cultivable portion and not the fallow or the barren portion. A perusal of the orders passed by the learned trial Judge as also the learned District Judge does not even indicate that such contention was agitated. In fact after perusing the Kabulayat, the learned District Judge specifically held that permanent lease was created. In view thereof, the reliance placed on the decision in **Shankar Patil** (supra) by Mr. Marathe does not advance the case of the petitioners.

7. In the light of the above discussion, no case is made out for reviewing the order dated 16.6.2010.

8. 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. ”

9. 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.)

Deshmane (PS)