

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
REVIEW PETITION [STAMP] NO.17298 OF 2014
IN
SECOND APPEAL NO.258 OF 2014
WITH
CIVIL APPLICATION NO.286 OF 2018
WITH
CIVIL APPLICATION NO.71 OF 2016

Khandu Vishnu Gaikwad	]	
1A. Sakhubai Khandu Gaikwad and others.	]	Applicants
Vs.		
Dattatraya Pandurang Gaikwad	]	
Indubai Dattatraya Gaikwad and others.	]	Respondents

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Mr. Jaydeep Deo, learned Counsel for the Applicants.
Mr. Pramod J. Pawar, learned Counsel for the Respondents.

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CORAM : R.G. KETKAR, J.

DATE : 7th MARCH, 2019.

P.C.

Not on board. At the request of Mr. Deo, taken up for admission.

2. Heard Mr. Deo, learned Counsel for the applicants and Mr. Pawar, learned Counsel for the respondents at length.

3. By this Petition under section 114 r/w 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 6th May, 2014 passed by this Court in Second Appeal No.258 of 2014. By that order, the Second Appeal preferred by the petitioners was dismissed. Second Appeal was preferred by the petitioners challenging the

judgment and decree dated 5th July, 2010 passed by the learned Civil Judge, Junior Division, Vadgaon, Maval in Regular Civil Suit No.10 of 1995 as also the judgment and decree dated 17th January, 2014 passed by the learned District Judge-16 Pune in Civil Appeal No.584 of 2010. By these orders, the Courts below have dismissed the suit instituted by Khandu Vishnu Gaikwad (since deceased) for partition and declaration that the Sale Deed dated 2nd February, 1994 executed by original defendant No.1 Dattatraya Pandurang Gaikwad (since deceased) in favour of original defendants No.4,5 and 6 without any legal necessity.

4. In support of this Petition, Mr. Deo submitted that during pendency of the appeal, the petitioners had filed application Exhibit 55 on 28th November, 2012 under Order-XLI, Rule-27 of the C.P.C for production of additional evidence. By that application, the petitioners wanted to file un-registered partition deed of 1989, revenue receipt and certified copies of 7/12 extract. He submitted that the partition deed shows that Gat No.33 admeasuring 82.6 R and Gat No.273 admeasuring 0.67 R were ancestral properties. After the death of Honaji Gaikwad, those properties were recorded in the name of Pandu Yesu Gaikwad as Karta and Manager of Joint Family. In these properties, Dattatray Pandurang Gaikwad, Khandu Vishnu Gaikwad, Hiranman Raghunath Gaikwad and Hiranman Shitaram Gaikwad have $\frac{1}{4}$ share. The said partition was effected orally among these four persons and $\frac{1}{4}$ share is partitioned by metes and bounds. Accordingly, these arrangements were recorded in the partition deed. He submitted that if partition deed dated 31st March, 1989 is taken into consideration, it shows that all these properties are joint properties.

5. On the other hand, Mr. Pawar supported the order under review. He has invited my attention to paragraphs 3 to 5 of the order dated 6th May,

2014 and submitted that after appreciating the evidence on record, the Courts below have concurrently held that there was previous partition in the family. He, therefore, submitted that no case is made out for review of the order.

6. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. In so far as Gat No.33 and Gat No.273 are concerned, plaintiff No.1(b) Banshi, son of Khandu Gaikwad admitted that in 7/12 extract of Gat No.33 and 273, name of Pandu (father of defendant No.1) was recorded. After appreciating the evidence on record, it was observed that the Courts below did not commit any error in holding that there was previous partition in Gaikwad family. The findings recorded by the Courts below are based upon appreciation of evidence on record. No question of law, much less any substantial question of law arises in this appeal. It is also material to note that the application filed by the petitioners under Order-XLI, Rule-47 was rejected by the learned District Judge. That order was not attacked in the second appeal as contemplated in section 105 of the C.P.C.

7. 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. ”

Applying the tests laid down by the Apex Court in the above decision to the facts of the present case, I am satisfied that no ground is made out for review of the order dated 6th May, 2014. In view thereof, no case is made out for reviewing the order. Hence, Petition fails and the same is dismissed.

8. In view of disposal of Review Petition, C.A. No.286 of 2018 and C.A. No.71 of 2016 do not survive and are disposed of.

[R.G. KETKAR, J.]