

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

*CIVIL APPLICATION NO. 85 OF 2017
(For condonation of delay)
Along with
REVIEW PETITION (Stamp) NO. 34575 OF 2016
IN
SECOND APPEAL NO. 250 OF 2016
with
CIVIL APPLICATION NO. 141 OF 2017
(For stay)*

Mr.Ashok Kishan Borade and others ... Applicants.

V/s.

Ms.Sindhumati Hanumant Chavan and others ... Respondents.

Mr.Pradeep Gole a/w Mr.Sohil Gulabani i/b Ajit Kenjale, for
Applicants / Petitioners.

Mr.Rajesh Kachare /b Mr.Aashish Ghadge, for Respondents.

CORAM : N.M. Jamdar, J.

Date : 25 July, 2019.

P.C. :-

The Review Petition is notified on Board. Last time the matter had come up on Board, it was informed to the parties that the Civil Application as well as the Review would be taken up for

consideration. Yet when the matter is called out request is made on behalf of the Advocate for the Review Petitioner for adjournment. Considering the fact that I am sitting single today specifically to take up review applicatoins I have declined the request of the learned counsel for the Petitioner. Further the grounds for Review are specified in the Petition, which I have gone through

3. So far as Civil Application for condonation of delay is concerned, having heard the learned counsel for the Respondents and considering the facts and circumstances the Application for condonation of delay is allowed and as directed earlier Review Petition is taken up for consideration forthwith.

4. The order under review dated 5 July 2016 was passed in a Second Appeal. After hearing the parties the Second Appeal was dismissed confirming the concurrent findings of both the Courts. The suit filed by the Respondents was decreed by the learned Civil Judge. Both the Courts had held that the property is a joint family property and on the basis of a mutation entry, title does not pass. Therefore by dismissing the Second Appeal, Court had refused to interfere with concurrent findings of both the Courts on the ground that there was no substantial question of law involved.

5. Petitioners had challenged the order dated 5 July 2016 in

the Apex Court. The order of the Apex Court shows that the Special Leave Petition was dismissed and liberty was granted to the Petitioners to approach the High Court for correction in the impugned judgment. The word used by the Supreme Court is 'correction' and not review. Correction and review are two different concepts. The grounds in the Review Petition read as if the Petitioners have filed an appeal.

6. Various grounds have been taken in the Review Petition. The ground in law is raised regarding illegitimate son having an equal share. Firstly, that mere erroneous order cannot give rise to exercise for review jurisdiction. Secondly, that there is an error that the married daughter will get equal share and thirdly, that there is an error in framing substantial question of law that married daughter has *locus standi* to file a suit. The argument that the substantial question of law was wrongly framed is entirely incorrect as the Second Appeal was disposed of holding that no question of law arises. The argument regarding the right of illegitimate son of the deceased has no basis since they had not challenged the order passed in the Second Appeal and in the Supreme Court had accepted the same. The Review Petitioners are purchasers. Even the arguments regarding rights of married daughter are concerned, the Respondents have pointed out in their reply that since Kashinath expired prior to commencement of the Hindu Succession Amendment Act of 2005,

the issue does not arise. The Petitioners as purchasers contended that they were bonafide purchasers and by dismissing the Appeal concurrent finding was confirmed against them.

7. The Review Petition is nothing but an attempt to stall execution proceedings and misuse the liberty granted by the Supreme Court to point out the correction. No such correction is pointed out. What is sought is rehearing of the entire Appeal.

8. Review Petition is rejected.

9. In view of the above, the Civil Application No.141 of 2017 does not survive and stands disposed accordingly.

(N.M. Jamdar, J.)