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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2935 OF 2019

Sachin Rajaram Shinde & Ors.	..Petitioners.
V/s.	
Rajaram Vishwanath Shinde & Ors.	..Respondents.

Mr.J.P.Kharge for the petitioners.

Mr.Ranjit S.Hatkar i/b. Rajesh S.Jadhav for respondent No.2.

Mr.Umesh R.Mankapure for respondent No.3.

CORAM : M.S.SONAK, J.

DATE : APRIL 9, 2019

ORAL JUDGMENT

Heard Mr.Kharge, learned counsel for the petitioners, Mr.Hatkar, learned counsel for respondent No2 and Mr.Mankapure learned counsel for respondent No.3- the contesting respondent.

2. Challenge in this petition is to the order dated September 27, 2018 by which learned District Judge, Sangli has dismissed the petitioner's Review Petition No.1/2016 as not maintainable by relying on the provisions of Order 47 Rule 2 of the Civil Procedure Code ('the CPC).

3. The record indicates that the petitioners, the original plaintiffs in Regular Civil Suit No.162/1991 in which respondent No.3 was defendant No.2. It was a suit for partition which came to be disposed of by judgment and decree dated March 29, 2006.

4. The petitioners, being aggrieved by the portion of the aforesaid decree by which partition was not granted in respect of one of the property instituted Regular Civil Appeal No.106/2006 before the learned District Judge, Sangli. This appeal was disposed of by judgment and order dated April 25, 2016.

5. As against the judgment and decree dated April 25, 2006, the petitioners instituted Civil Review Petition No.1/2016. Similarly, respondent No.3 herein instituted Second Appeal No.848 of 2016 before this Court.

6. By the impugned order dated September 28, 2018 the learned District Judge at Sangli had rejected the review petition, as not maintainable, on the ground that Order 47 Rule 2 of CPC bars such a review petition, since, there is already an appeal pending against the judgment and decree dated April 25, 2016.

7. Order 47 Rule 2 of the CPC provides that a party who has not appealed from a decree or order may apply for review of the judgment notwithstanding pendency of the appeal by some other party except where the ground of such appeal is common to the applicant and

the appellant or when being respondent, he could present to the Appellate Court, the case on which he applies for the review.

8. In the present case, it is not as if the petitioners have themselves instituted any appeal against the judgment and decree dated April 25, 2016. It is also not a case where the second appeal instituted by respondent No.3 can be stated to be on the grounds which are common to respondent No.3 and the present petitioners.

9. Accordingly, it is apparent that the learned District Judge has misread the provisions of Order 47 Rule 2 of the CPC and thereafter, declined to exercise review jurisdiction. On this short ground, the impugned order is required to be set aside and is hereby set aside.

10. Learned District Judge is directed to consider and dispose of the Civil Review Petition No.1/2016 instituted by the petitioners in accordance with law, as expeditiously as possible and in case within a period of three months from the date on which the authenticated copy of this order is produced before him.

11. Mr.Mankapure, learned counsel for respondent No.3 has, however, contended that in the second appeal instituted by respondent No.3, it is open to the petitioners to raise the grounds on which they have applied for review. He states that this can be done under Order 41 Rule 33 of the CPC.

12. Since the aforesaid ground was never urged before the learned District Judge in the first instance, the aforesaid ground is kept open for adjudication by the learned District Judge while deciding the review petition.

13. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

14. All parties to appear before the Appeal Court on April 30o, 2019 at 11.00 a.m. and furnish an authenticated copy of this order.

15. It is made clear that this Court has not adverted to the contentions of either parties on merits of the matter and, therefore, all contentions on merits are left open to be decided by the learned District Judge.

16. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)