

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC.CIVIL APPLICATION (REVIEW) NO.46/2019 in S.A.No.38/09(D)

Smt. Nanibai wd/o Laxmanrao Navkhare

Vs.

Vitthalrao Marotrao Navkhare and anor.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri M.G.Bhangde, Senior Advocate assisted by Shri S.N.Tapadia, Advocate
for applicants.

Mrs. S.W. Deshpande, Advocate for non applicant no.1.

CORAM : A.S.CHANDURKAR, J.

DATE : March 22, 2019

By this application, the original appellants seek review of the judgment dated 24.11.2018. According to the review applicants in the light of the findings recorded in the judgment dated 24.11.2018 in Second Appeal No. 38/2009, the properties acquired by the parties in and after 1991 were alone liable to be subjected to partition. In view of the admitted position that the properties from S.No.17/2 at Mouza Saturna as well as field Survey Nos. 6/1 and 49/07 at Mouza Nimbora had been acquired prior to 1991, said properties were liable to be excluded from the decree for partition.

Shri M.G.Bhangde, learned Senior Advocate for the applicants by referring to the findings recorded in paragraphs 13 to 16 of the judgment in the Second Appeal submitted that the aforesaid properties were purchased independently by the respective parties much prior to 1991. Sale Deed at Exhibit 226 dated 21.04.1982 was in the name of Laxmanrao with regard to the eastern portion of Survey No.17/2. Sale Deed dated 22.06.1982 was in the name of original plaintiff Vitthalrao with regard to 2750 sq. feet land from Survey No.17/2. The defendant no.2 had on 06.07.1983 purchased the remaining land from Survey No.17/2 as per sale deed at Exhibit 224. Similarly the field properties were purchased as per sale deed at Exhibits 316 and 317 in the year 1971 and

1973. It was thus submitted that in the light of the findings recorded by this Court that from 1991 onwards till the death of Laxmanrao in the year 2004, the business of the garage was joint, failure to exclude the aforesaid properties from being partitioned is an error apparent on the face of record and hence the aforesaid judgment deserves to be reviewed to that extent.

Mrs. S.W.Deshpande, for the non-applicant no.1 opposed the aforesaid application by filing reply. It was stated that there was no error apparent on the face of the record and that even prior to 1991, the joint family was in existence. Since the decree for partition had been passed by the appellate Court which has been maintained by this Court, the aforesaid properties though purchased prior to 1991 could not be excluded from the decree for partition. The findings recorded were based on proper appreciation of the evidence and the application was liable to be dismissed.

Heard learned counsel for the parties. In para 13 of the judgment dated 24.11.2018, it has been held that the evidence on record indicated that it was Laxmanrao who had started the garage business in the year 1964 on the leasehold plot of Keshardas Tapar. The said business continued there till the year 1991 and after which the possession was returned to the leaseholder. In para 14 after referring to the purchase of lands separately by Laxmanrao, his son Ashok as well as the plaintiff Vitthalrao, it has been observed that the said plots were purchased by these parties individually in their respective names. In para 14 it has also been held that there was absence of evidence to indicate inability of the plaintiff to purchase the plot as per sale deed Exhibit 205 which is dated 22.06.1982. In other words, the finding recorded is that the plaintiff had purchased the said plot on his own accord. Thereafter in para 16 it has been held in clear terms that the three plots located in S.No.17/2 had been separately/individually purchased by Laxmanrao, the plaintiff and the defendant no.2. From these findings it is clear that it was held that the purchase of these plots individually in the respective names separately in the year 1982 coupled with finding as recorded as to the plaintiff having purchased one plot in his name, it is clear that the said plots were individually purchased by the said parties.

Another finding recorded is that from 1991 to 2004 the business of garage was joint between Laxmanrao and the plaintiff. It is on that basis that the question of law has been answered by holding that the plaintiff had proved that “Gajanan Automobiles” was a joint family business of Laxmanrao and Vitthalrao.

It is thus seen that in the light of clear findings recorded as to the separate and individual purchase of the lands from Survey No.17/2 as well the field properties at Mouza Nimbora those properties were liable to be excluded from the decree for partition. There is no finding recorded that since inception the plaintiff and Laxmanrao were joint owners of the aforesaid properties. In fact it has been held that the said properties were purchased individually by them. It is thus clear that by not excluding these properties from the decree for partition despite recording a finding as regards their individual purchase, there is an error apparent committed while rendering the judgment dated 24.11.2018. To that extent the said judgment is required to be reviewed and the error is liable to be corrected.

In that view of the matter, while maintaining the decree for partition and separate possession as passed, the properties at Exhibits 205, 224 and 226 from Survey No.17/2 at Mouza Saturna along with the properties at Mouza Nimbora being Survey No.59/07 on 19.11.1971-Exhibit 316 and field Survey No.6/1 vide sale deed at Exhibit 317 dated 12.12.1973 are liable to be excluded from the decree for partition. The said decree for partition shall operate in respect of remaining properties as shown in the Schedule to the plaint.

The Miscellaneous Civil Application is allowed in the aforesaid terms and disposed of. There shall be no orders as to costs.

JUDGE

Andurkar.