

**123+126 RA-RS-4803-2018 (O&M) in
RSA No.3550 of 1987**

**BAKHTAWAR (DECEASED) THROUGH LR
VS
SHEO DEVI AND ORS**

Present: Mr. Ashok Gurnani, Advocate and
Mr. Jatan Singh, Advocate and
Mr. S.K. Rana, Advocate for the review applicants.

RA-RS-4803-2018 (O&M)

This review application has been filed after Hon'ble the Supreme Court permitted the applicants to file review application vide order dated 26.11.2018, which is extracted as under:-

“Learned counsel for the petitioner submits that the crucial question arising in the matter in light of section 15 (2)(b) of the Hindu Succession Act, 1956 has not been adverted to by the High Court and that contention will go to the root of the matter.

In that case, we grant liberty to the petitioner to first approach the High Court by way of review petition which may be filed within three weeks from today. If review petition is filed within three weeks, the same may be decided on its own merit in accordance with law. All questions are left open. If decision in review petition is adverse to the petitioner, it will be open to the petitioner to challenge the said decision as well as the impugned order if the need arises.

The Special Leave Petition is disposed of accordingly.”

Learned counsel for the review applicants has submitted that the appeal was filed by the appellant and findings with regard to the validity of the consent decree which was passed in accordance with Order 12 Rule 6 CPC was not under challenge. Learned counsel further submitted that since

such finding was not under challenge, therefore, the Court was debarred from examining the correctness of such findings.

Answer to the argument of the learned counsel lies in the provision of Order 41 Rule 33 of the Code of Civil Procedure, 1908 which enables the Court to set aside a finding even if there is no appeal by the respondents.

Learned counsel further submitted that the effect of Section 15 (2) of the Hindu Succession Act has not been noticed by this Court. In this regard, it may be noted that at the time of arguments, no submission in this regard was raised. In any case, this Court has now considered the provision of Section 15(2) of the Hindu Succession Act, 1956 and find that such provision would have no applicability in view of the fact that Sheo Bai had received the property in a family settlement which was acknowledged through a Civil Court decree suffered by her husband.

Hence, there is no ground to interfere.

Review application is dismissed.

CM No.2523-C of 2019

No order is required to be passed in this application.

08.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**