

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 REVIEW APPLICATION [CIVIL] NO.79 OF 2017
IN SECOND APPEAL NO.491 OF 2012

BHIMRAO VITTHAL PATIL AND OTHERS
VERSUS
BHAGWAN GOVINDA PATIL,
DIED THROUGH L.RS. RAMRAO & OTHERS

...
Mr.D.R.Bhadekar, Advocate for the applicants
Mr.P.R.Katneshwarkar, Advocate for the
respondent nos.1 to 7.

...
CORAM : V.L.ACHLIYA,J.
DATE : 13.02.2020

ORAL ORDER

1. The applicants i.e. original defendants in the suit have preferred this application seeking review of the order dated 16.01.2013 passed in Second Appeal No.491 of 2012.

2. Heard learned counsel for the applicants-original defendants and the learned counsel for the respondents. Perused the copy of the order dated 16.01.2012 passed by this Court (Coram : A.V.Nirgude, J.) and order dated 02.05.2016 passed by the Hon'ble Apex Court.

3. Before averting to deal with the

submissions advanced, it is useful to refer the checkered history of the matter. The suit was originally instituted by Bhagwan Govinda Patil as against his brother Bhimrao Govinda Patil and others i.e. applicants in the Review application. The plaintiffs and defendants claimed to be the ancestors of Govinda Patil, who died on 24.03.1966. He died leaving behind two sons namely Bhagwan (plaintiff), his brother Vithal (father of petitioners) and four daughters. The suit seeking declaration and possession was instituted by deceased Bhagwan, the father of respondents. Plaintiff has claimed declaration to the effect that he has one half share in the suit property bearing Gat No.23 admeasuring 4 H 38 R and further claimed the decree of one half share in suit property. The suit filed by plaintiff registered as Regular Civil Suit No.128/1999 and came to be decreed in favour of plaintiff and as against defendants-applicants vide judgment and decree passed on 21.12.2006. The Court declared the plaintiff is entitle to one half share in the suit property and further passed decree of possession to the extent of share of plaintiff. The judgment and decree dated 21.12.2006 came to be

challenged in appeal by the defendants/applicants by filing appeal before the District Court, Jalgaon, which was registered as Regular Civil Appeal No.34/2007. By the judgment and order dated 29th March, 2012, the learned District Judge-1, Jalgaon pleased to dismiss the appeal and confirmed the judgment and decree passed by trial Court. Being aggrieved the defendants preferred Second Appeal before this Court, which came to be registered as Second Appeal No.491/2012. The appeal was heard and decided by this Court (Coram : A.V. Nirgude,J) vide order dated 16.01.2013. This Court has refused to admit the appeal by observing that appeal raises no substantial question of law to entertain the appeal.

4. Being aggrieved by order dated 16.01.2013 passed in Second Appeal No.491/2012, the applicants- original defendants preferred Special Leave to Appeal before Hon'ble Apex Court and same was registered as Special Leave to Appeal (cc) No.7696/2016. When the matter came up for hearing the learned counsel for the petitioners sought permission to withdraw the Special Leave to file Appeal to enable

petitioners to file review application before this Court. By order dated 02.05.2016, the Special Leave to Appeal came to be disposed of as withdrawn. Thereafter, applicants-original defendants preferred Review Application along with application seeking condonation of 1390 days delay in filing review application. By order dated 26.08.2019 passed in the matter, the delay came to be condoned and the present application seeking review has been registered.

5. In brief, it is the contention of applicants/petitioners that after demise of Govinda Hari Patil, the common ancestor of the plaintiffs and defendants made partition of various lands owned by deceased Govinda except the suit land. The land admeasuring 2 H 80 R part of Gat No.23, which continued to be in possession of deceased Vithal the father of defendants. The said property was excluded from the partition. During the life time of deceased Vithal he executed the sale deed of said property in favour of his son Bhimrao i.e. applicant no.1 by registered sale deed dated 31.03.1992 by accepting sale consideration of Rs.99,000/-. This fact was within the knowledge of the plaintiff. Since

the year 1985 and thereafter till date of execution of sale deed by Vithal, deceased the plaintiff has not objected to said transaction.

6. It is the contention of the applicants/petitioners that the suit filed by the plaintiff ought to have been dismissed for non-joinder of necessary parties to the suit as Eknath the brother of original plaintiff was not made party to suit filed by plaintiff. In that view, the trial Court erred in awarding one half share to the plaintiff. After the demise of Govinda, the revenue authorities wrongly recorded the mutation entry thereby showing the names of Bhagwan and Vithal as successors/legal heirs of deceased Govinda Patil. Taking disadvantage of incorrect mutation entry recorded by the revenue authority, the deceased plaintiff has claimed one half share in suit property. It is the contention of petitioners that while passing the order dated 16.01.2013 this Court has not considered the said contention raised as to non-joinder of necessary party to the suit. So also this Court has not considered the contentions raised by petitioners as to issue

of limitation in filing suit On these count the petitioners have claimed that order dated 16.01.2013 deserves to be reviewed and appeal be heard afresh for admission.

7. I have carefully considered the submissions advanced in the light of record and proceedings of the case and more particularly the order dated 16.01.2013 passed in respect of which the review has been sought by the applicants. In my view, no case is made out to entertain the application seeking review of order dated 16.01.2013. There are concurrent findings on facts recorded by Courts below. The appeal raises no substantial question of law to entertain the Second Appeal. While hearing appeal for admission, this Court has considered the challenges raised in appeal and dealt the same, while passing order dated 16.01.2013. In paras 2 to 4, the Court has recorded the contentions raised in appeal and dealt the same while passing order. In the order dated 16.01.2013 passed in the matter, the Court has observed as under:-

"2. The only defence that the appellant/defendant took was that in 1992, Vithal, the brother of the

original plaintiff sold part of the suit land to one of the defendants (his own son) and since the suit is not brought challenging the said sale-deed within three years, the suit should fail. The appellants/defendants also took defence of non-joinder of parties. All these defences were in-fact futile and the Lower Court rejected them.

3. During the evidence, the appellants/defendants brought on record admission of the respondent/plaintiff that the partition took place long back between the brothers Vithal, Bhagwan and other family members. However, this admission has no relevance to the facts and pleadings of the case. The appellants/defendants ought to have raised defence in the written statement that in a partition that took place earlier, the suit land fell to the share of Vithal, the father of the appellants/defendants. Since this was not specifically mentioned as defence, no cross-examination on that line is permissible and even if it is done, the evidence is irrelevant. So far as point of limitation is concerned, the objection is again futile because for a suit for partition, there cannot be any limitation. The appellants/defendants could have undertaken certain transaction inter se in respect of the suit property and such transaction is not binding on the respondents/plaintiffs and so

they were not required to challenge it. They could have ignored such transaction as non-est, as far as their share and right was concerned.

4. Third objection regarding non-joinder of the parties is rejected by the Courts below mainly because the dispute was restricted to two brothers of the family, namely Vithal and Bhagwan and all the members of their family are parties to the suit. The learned Counsel for the appellants could not make further submission so as to come to the conclusion that there is substantial question of law involved in the appeal. The appeal should, therefore, fail."

8. Thus, the order dated 16.01.2013 passed in the matter is reasoned and speaking order. There is no mistake apparent on the face of record so as to call for review of the order.

9. Perusal of the record and more particularly the rival pleadings spell out that the original plaintiff has approached with a specific case that the land bearing Gat No.23 admeasuring 4 H 38 R (hereinafter referred to as "the suit property") was originally owned by deceased Govinda Hari Patil the father of original plaintiff and

Vithal the father of defendants. After the demise of Govinda Patil, Chhababai Trimbak Deshmukh and Bebibai Ashok Patil the sisters of plaintiff and defendants relinquished their shares in the suit property in favour of plaintiff and his brother Vithal. The plaintiff and the father of the defendants were entitled to one half share in the suit property. The mutation entry to that effect also recorded after demise of Govinda Patil. The names of plaintiff and father of the defendants recorded as the legal heirs of deceased Govinda Patil. The plaintiff has approached with a case that the plaintiff and father of defendants were joint owner of suit property. The suit property remained as joint property till the death of father of defendants. Plaintiff is having individual one half share in suit property. Acting with dishonest intention, the defendant no.1 (Bhimrao) got executed bogus sale deed in respect of land admeasuring 2 H 80 R forming a part of suit property from his father Vithal. The deceased Vithal had no right to execute sale deed in respect of suit property. The fact regarding execution of sale deed in the year 1992 was suppressed from the plaintiff. In the year 1997, the

defendant no.1 got recorded mutation entry in his name on the basis of sale deed alleged to be executed in the year 1992; after the demise of his father in the year 1997. Thereafter, plaintiff requested defendants to provide one half share in the suit land. However, the defendants refused to provide one half share in suit property to the plaintiff. Thereafter, plaintiff constrained to file suit seeking declaration and possession to the extent of one half share in suit property.

10. The suit preferred by the plaintiff came to be contested by defendant no.1 i.e. Bhimrao Vithal Patil in whose favour the alleged sale deed to the extent of 2 H 80 R executed by his deceased father. Defendant no.1 has claimed that the sale deed executed in his favour to be legal with contention that his father entitle to execute sale deed to the extent of his undivided one half share in suit property. The other defendants filed pursis and adopted the written statement filed by defendant no.1.

11. Thus if we consider the rival pleadings then the defendants/applicants have

not disputed the case of the plaintiff that the suit land devolved upon plaintiff and father of defendants after the demise of their father Govinda Patil and the plaintiff and father of defendants were having undivided one half share in suit property. The suit land was neither partitioned nor separate possession was given to deceased father of defendant no.1 still the sale deed in question was executed by deceased Vithal in favour of defendant no.1. In that view, the defendants have not disputed the case of plaintiff that plaintiff is legally entitled for half share in suit property. In that view, the decree passed by trial Court and confirmed in appeal suffers from no infirmity so as to call for interference in exercise of second appellate jurisdiction of this Court.

12. The trial Court has decreed the suit vide judgment and decree dated 21st December, 2006. The Appeal preferred by the applicants – defendants came to be dismissed vide judgment and decree dated 29th March, 2012. In that view, there are concurrent findings on facts recorded by the Courts below. By the impugned order dated 16.01.2013, this Court has dismissed the second appeal preferred by

petitioners-defendants by speaking order. While dismissing the appeal Court has found no merit in appeal. In that view no case is made out to entertain the application seeking review of order dated 16.01.2013.

13. Thus review application filed by the applicants is devoid of merit. No mistake apparent on the face of record to entertain the application seeking review of order dated 16.01.2013. The contentions raised by the applicants already considered by this Court while passing the order dated 16.01.2013. I am therefore not inclined to entertain the review application. Accordingly the review application is rejected with no order as to costs.

[V.L.ACHLIYA]
JUDGE

SGA