

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**14 REVIEW APPLICATION (CIVIL) NO.61 OF 2020  
IN SA/23/2018**

DATTU HARIBA JADHAV LRS PANDURANG AND OTHERS  
VERSUS  
TRIMBAK GENA DANDNAIK LRS VINOD AND OTHERS

...  
Advocate for Applicants : Mr. Deshmukh Prashant K.  
Advocate for Respondents : Mr. S. S. Wakure  
...

**CORAM : SMT.VIBHA KANKANWADI, J.**  
**DATE : 30-08-2021.**

**ORDER :**

1. Present review petition has been filed by the original plaintiffs/appellants praying for review of the order passed by this Court on 14-11-2017 in the second appeal thereby dismissing it stating that no substantial questions of law have been pointed out.
2. Present plaintiffs had filed Regular Civil Suit No.224 of 1993 for declaration and injunction. The said suit came to be partly decreed by learned 4<sup>th</sup> Joint Civil Judge, Junior Division, Osmanabad on 10-10-2007. The relief of declaration of ownership was dismissed, however, the defendants were restrained perpetually from interfering with the possession of the plaintiffs over the suit land. The original defendant had expired during the pendency of the suit and his legal heirs were

brought on record. The legal representatives of the original defendant challenged the said decree in Regular Civil Appeal No.60 of 2008 before District Court, Osmanabad. It appears that in the same appeal cross-objections were filed by the present applicants/original plaintiffs. The said appeal was allowed. The cross-objections were dismissed and the suit filed by the original plaintiff was dismissed by decree dated 05-10-2015 by learned District Judge-4, Osmanabad. Thereafter, the legal representatives of the original plaintiff filed Civil Application No.10287 of 2017 for getting the delay of 431 days in filing the second appeal condoned. During the hearing of the said application, the delay was condoned and the second appeal was heard on the point of admission on the same day. After an elaborate order, this Court dismissed the appeal stating that no substantial questions of law are involved. Now, this order is under challenge in this review petition.

3. Heard learned Advocate Mr. P. K. Deshmukh for petitioners and learned Advocate Mr. S. S. Wakure for respondents No.1 to 3.

4. It has been vehemently submitted on behalf of the review petitioners that this Court had not considered certain important aspects though pointed out on behalf of the review petitioners. The

original plaintiffs had come with a case that he had executed sale deed dated 28-04-1970 in favour of the original defendant as collateral security only and it was a Sham and bogus document that was never acted upon. He had contended that the possession was never handed over to the defendant though the sale deed was executed. The learned Trial Judge held that the plaintiff had a title and then he had not passed the title to the original defendant on the basis of said sale deed dated 28-04-1970. It was also held that the defendants have obstructed his possession over the suit land. However, it was held that the plaintiff has failed to prove adverse possession over the suit property since 1970. The possession of the plaintiff was protected by the learned Lower Court by issuing an injunction, however, the learned Appellate Court held that the suit is not within limitation and, therefore, the entire suit was dismissed. The point regarding ownership acquired by the plaintiff by adverse possession was never considered by any Courts in proper perspective. When the possession itself was not handed over by the plaintiff to the defendant and the plaintiff had shown that he had exercised the rights of ownership over the suit property in hostility to the defendant then not only the prayer regarding declaration of ownership ought to have been confirmed by the First Appellate Court

as well as this Court along with the protection to the said possession by way of relief of perpetual injunction and, therefore, the order passed by this Court stating that no substantial questions of law are arising in this case, is wrong. The application of Article 58 of the Limitation Act by the learned First Appellate Court was wrong.

5. Learned Advocate for the applicants has relied on the decision in *State of West Bengal vs. Dalhousie Institute Society*, reported in *AIR 1970 Supreme Court 1778*, wherein it has been observed that :-

“The possessor acquires title by possession after a continues possession for more than 12 years on the basis of grant and adverse to all the concern.”

He has pointed out paragraph No.17 of the Judgment which runs thus :-

“17. The above extract establishes that a person in such possession clearly acquires title by adverse possession. In the case before us there are concurrent findings recorded by the High Court and the Special Land Acquisition Judge in favour of the respondent on this point and we agree with those findings.”

Further, he is relying on the decision in *Krishna Ram Mahale (dead) by his LRs vs. Mrs. Shobha Venkat Rao*, reported in *AIR*

*1989 Supreme Court 2097*, wherein it has been observed that :-

“It is well settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law.”

He further relied on the decision of this Court in *Govindbhai Ramjibhai Chauhan vs. Gokulchand Juthalal Agrawal*, reported in *1996 (2) Mh.L.J. 1062*, wherein it has been observed that :-

“A trespasser in settled possession can seek temporary injunction to protect his possession till he is dispossessed in accordance with law. ”

The learned advocate for the review petitioners, therefore, submitted that until and unless they are dispossessed by adopting due procedure of law, their possession ought to have been protected.

6. Per contra, learned Advocate Mr. Wakure for respondents submits that this Court has considered the point of limitation appropriately, so also the learned First Appellate Court has also taken into consideration the oral evidence as well as documentary together with the legal position. When the suit itself was a right

period of limitation, there was no question of grant of any kind of relief to the plaintiff.

7. At the outset, it can be said that this Court had heard the submissions of both sides when the matter was taken up for admission. In view of Section 100 of the Code of Civil Procedure, unless substantial questions of law are pointed out by the appellant in the second appeal, this Court is not bound to admit the second appeal and deal with it and not even in fact issue notice to the respondent. Reliance can be placed on the decision in *Ashok Rangnath Magar vs. Shrikant Govindrao Sangvikar*, reported in (2015) 16 SCC 763, wherein it has been held that :-

“18. In the light of the provisions contained in section 100, Civil Procedure Code and the ratio decided by this Court, we come to following conclusion :

- (i) On the day when the second appeal is listed for hearing on admission if the High Court is satisfied that no substantial question of law is involved, it shall dismiss the second appeal without even formulating the substantial question of law ;
- (ii) In cases where the High Court after hearing the appeal is satisfied that the substantial question of law is involved, it shall formulate that question *and then*

the appeal shall be heard on those substantial question of law, after giving notice and opportunity of hearing to the respondent ;

(iii) In no circumstances the High Court can reverse the judgment of the trial Court and the first Appellate Court without formulating the substantial question of law and complying with the mandatory requirements of section 100, Civil Procedure Code.”

8. When a detailed order has been passed and this Court had come to the conclusion that no substantial questions of law are arising in the second appeal and the appeal lacks merits and it was then dismissed, the question is, whether a review of the same can be entertained. The scope of the review petition is required to be considered on the basis of catena of Judgments of Hon’ble Supreme Court as well as this Court. The ratio laid down in *Haryana State Industrial Development Corporation Ltd.(supra)*, *Kishor R. Madan (supra)* and *Lily Thomas (supra)* are applicable here. Further, this Court in *Review Application (Stamp) No.14527 of 2020* observed that -

“7. The scope of the review petition is required to be considered. In *Vinay Sharma & another Vs. State (NCT of Delhi) & others [(2018) 8 SCC 186]*, it has been observed that "Power of review cannot be

confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications." Here, in this case, the points which have been raised by the review petitioners can be termed as repetition of old and overruled arguments. Further, in *Haryana State Industrial Development Corporation Limited Vs. Mawasi & others* [(2012) 7 SCC 200], it has been held that "Roving inquiry or denovo hearing in guise of review is impermissible." Reliance was placed in this decision on the case *Thungabhadra Industries Ltd. Vs. Govt. of A.P.* [AIR 1964 SC 1372] (Three Judges Bench), wherein it has been observed thus :-

"11.... A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the

face of the record would be made out."

Further note was taken in respect of the decision in *Parsion Devi Vs. Sumitri Devi* [(1997) 8 SCC 715], wherein it has been observed thus :-

"9. ... An error which is not self- evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. ... A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

*The same ratio is reiterated in Vikram Singh alias Vicky Walia & another Vs. State of Punjab & another* [(2017) 8 SCC 518], wherein it has been held that "Review cannot be made on those grounds which were already urged during appeal." In this case, the term "an error apparent on the face of the record" has been explained with the help of earlier pronouncement of the Hon'ble Apex Court in *Kamlesh Verma Vs. Mayawati* [(2013) 8 SCC 320], wherein it was held that "an error which is not self-evident and has to be detected by a process of reasoning is not an error apparent on the face of the record."

9. The ratio laid down in *State of West Bengal & others vs. Kamal*

*Sengupta & another, (2008) 8 SCC 612*, can be taken into account wherein it has been observed thus :-

"21. At this stage, it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different

view could have been taken by the court/tribunal on a point of factor law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."

10. Therefore, taking into consideration the scope of the review when a detailed order is passed by this Court as to how the proposed substantial question of law by the appellant is in fact not a substantial question of law as contemplated under Section 100 of the Code of Civil Procedure has been given in detail, there is no scope for this review.

11. At the outset, perusal of the papers would further show that the original plaintiff i.e. the predecessor of the present applicants who had filed the suit, had taken alternative pleas. At the first place, he was coming with a case that the sale deed which he had executed in favour of the original defendant on 28-04-1970 was in fact for the collateral security only and it was never acted upon. Both the Courts below have given the finding in the affirmative. They have also held that the defendant has not acquired any title or possession over the suit land on the basis of the sale deed dated 28-04-1970. The alternative plea that was raised by the plaintiff is in respect of adverse possession. The question was whether he could

have taken a plea of adverse possession which is contradictory to his main contention. Whether the plaintiff ought to have allowed to go ahead with the evidence with such kind of two contrary and alternative pleas was a question, however, we cannot go back now. In fact, the plaintiff ought to have been asked to choose one of the please that is one of the claims on which he wants to go ahead with the suit further. If the title itself had not passed to the defendant and it was held by both the Courts that the plaintiff had the title in the past that is before executing that sale deed, then the question of adverse possession would not come. He cannot establish the title in hostility to himself. For claiming and proving title by adverse possession, the plaintiff then admits the title of the defendant which he has not done in this case. Therefore, now also the review on that point is out of the question. Now as regards the ownership and injunction is concerned which was prayed then by taking help of Article 58 of the Limitation Act, the learned First Appellate Court held that the suit was beyond the period of limitation. The oral evidence was considered and it was held that though the sale deed was registered executed on 28-04-1970, the plaintiff had admitted in his cross-examination that he had repaid the amount of Rs.2000/- in the year 1975 and defendant No.1 avoided to reconvey the

property by executing sale deed or return the original document of sale deed. It was, therefore, taken that the cause of action arose in the year 1975. The suit was filed in the year 1993. Thereafter, reliance was placed on the decision in *Ganpat Rambhau Survase-Walke (Pujari) and Another vs. Government of Maharashtra and Others, reported in 2010 (6) Mh.L.J.199*, wherein it has been held that, "when the suit is barred by limitation for the relief of declaration, the suit for relief of injunction also does not survive." This Court also considered all the oral evidence as well as the provisions of Article 58 and also Article 20 of the Indian Limitation Act and taking into consideration the fact that when the defendant had refused to reconvey the property in the year 1975, it was observed that the cause of action first arose in 1975. The suit filed in the year 1993 was, therefore, barred by limitation. Further observations have been made by this Court that when the sale deed was within the knowledge of the plaintiff, so also the refusal in the year 1975, then it was expected by the plaintiffs to challenge the said sale deed in addition to seek a declaration of ownership of the property much more earlier than 1993. Therefore, no fresh circumstance has been pointed out for review. As regards the citations those have been pointed out by the learned Advocate for

the review petitioners; the ratio laid down therein cannot be disputed. However, taking into consideration the above facts which have been narrated and especially when all the facts of the present case the conclusion is drawn that the suit is beyond the period of limitation, no relief can be granted.

12. Further at the cost of repetition, on the basis of the ratio laid down in all the authorities which have been pointed out by discussing the scope of review petition and especially a review cannot be entertained as an appeal in disguise. There is no merit in the review petition, it stands dismissed with costs.

**(SMT. VIBHA KANKANWADI)**  
**JUDGE**

*vjg/-*

GAWADE  
VIRENDRA  
J

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VIRENDRA J  
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