

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO.25 OF 2021
IN
SECOND APPEAL NO.649 OF 2014
WITH
CIVIL APPLICATION NO.4554 OF 2020

BHARAT NARHARI PATIL
VERSUS
ADINATH SAKHARAM SOLANKHE AND OTHERS

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Mr. V.D. Salunke, Advocate i/b Mr. M.V. Salunke and Mr. D.B. Pokale,
Advocates for the applicant

Mr. G.V. Mohekar, Advocate for the respondent No.1

Mr. B.S. Kudale, Advocate for the respondent No.2

Mr. B.A. Shinde, Advocate for the respondent No.3

Mr. S.S. Thombre, Advocate for respondent Nos.7-A to 7-D

Mr. M.B. Karande, Advocate for the respondent No.8-A

Mr. A.A. Nimbalkar, Advocate for the respondent No.8-B

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 22nd JULY, 2021

PRONOUNCED ON : 03rd AUGUST, 2021.

ORDER :

1 Present review petition has been filed by respondent No.3 in
Second Appeal for review of certain observations in the order passed by this

Court on 02.04.2019 in Second Appeal No.649 of 2014. It will not be out of place to mention here that the said appeal was filed by the original defendant No.8-present respondent No.1 challenging the Judgment and Decree passed in Regular Civil Suit No.200/1990 filed by the respondent No.1 therein i.e. present respondent No.2 for partition and separate possession. The decree was passed by Joint Civil Judge Junior Division, Majalgaon, Dist. Beed. The said decree was challenged by original defendant No.8 in Regular Civil Appeal No.186/2004 (old R.C.A. No.10/2004) before learned Adhoc District Judge-1, Majalgaon, so also, the decree was challenged by original defendant No.1 by filing Regular Civil Appeal No.96/2004 (old R.C.A. No.3/2001). Both the appeals came to be dismissed by a common Judgment on 08.02.2007. The Second Appeal, which was filed by original defendant No.8 was disposed of without admitting, by this Court on 02.04.2019, as it was not raising any substantial question of law. It will not be out of place to mention here that the present review petitioner was represented by Advocate in the Second Appeal and he was heard in the Second Appeal.

2 Heard learned Advocate Mr. V.D. Salunke for the review petitioner, learned Advocate Mr. G.V. Mohekar for the respondent No.1, learned Advocate Mr. B.S. Kudale for the respondent No.2, learned Advocate Mr. B.A. Shinde for the respondent No.3, learned Advocate Mr. S.S. Thombre

for respondent Nos.7-A to 7-D, learned Advocate Mr. M.B. Karande for respondent No.8-A and learned Advocate Mr. A.A. Nimbalkar for respondent No.8-B.

3 It has been vehemently submitted on behalf of the review petitioner that in para No.8 of the order passed by this Court, this Court, this Court has observed that, “at the time of execution of the Judgment and Decree, if possible, the property sold to the present appellant can be put to the share of defendant No.2 and this observation may be considered by the executing Court/executing authority.” is the portion, by which the review petitioner is aggrieved. According to the review petitioner, he was not properly represented and his defence was not at all considered. It is stated that it was not brought to the notice of any Court that the review petitioner has not sold any land to respondent No.1 in this application. According to the review petitioner, the sale deed, which is shown by the respondent No.1, was never legal, but it was obtained by fraud. According to the review petitioner, he had taken hand loan of Rs.15,000/- from respondent No.1 and the respondent No.1 had taken signatures of the review petitioner on some documents. Review petitioner is unable to read and write properly, and therefore, by taking disadvantage of his situation the respondent No.1 had grabbed his land. According to him, he was not represented properly even

before the Courts below and his defence has not been considered properly. According to the learned Advocate representing the review petitioner, above said observation, in para No.8 by this Court, are pre-judicial to the interest of the review petitioner. In fact, it should have been held that the respondent No.2 has no right in the suit land. The partition should be made equally, that is, by metes and bound. If at all that decree is to be executed and now only the portion, which has been allegedly sold, cannot be put to the share of the review petitioner. Learned Advocate for the review petitioner also submitted that by expunging that para the matter be remanded for its proper adjudication.

4 The learned Advocates appearing for various respondents have strongly objected and submitted that the scope of the review petition under Section 114 of the Code of Civil Procedure, 1908 cannot be made large and what can be challenged by way of appeal cannot be included in the review petition. There is no error apparent on the face of the record. Both the Courts below as well as this Court elaborately considered the transactions. Further, the present review petitioner had never challenged the decree independently. Regular Civil Appeal No.96/2004 was filed by original defendant No.1, whereas Regular Civil Appeal No.186/2004 was filed by original defendant No.8. Now, the present review petitioner cannot take a

back door entry. He had every right to challenge the alleged sale deed, but he has not done that. Now, he cannot say that the said sale cannot be put to his share. This Court has taken note of the fact that both the Courts below have held that defendant Nos.1 and 2 have failed to prove the relinquishment by the plaintiff, which is stated to be on the basis of cash amount as well as gold given to her. Further, when the suit was filed prior in time to the transaction in sale between defendant No.2 and defendant No.8, it was also held that the said transaction cannot be a collusive suit in between the plaintiff and defendant Nos.1 and 2. It was held that the defendant No.2 has 4/16th share in the suit property, and therefore, when he alone had entered into that transaction, it was observed that, if possible, it should be put to the share of the present review petitioner. There is absolutely no necessity to entertain this review.

5 At the outset, the scope of the review under Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908 is limited. If we see the review application/petition, it is totally silent on the point as to what is that error apparent on the face of the record. Whatever the review petitioner is arguing now, that the sale deed was got obtained from him by fraud and real nature of the transaction was never raised by him before any Court. If we consider the issues framed by the learned Trial Judge, it can be

seen that there was not an issue in respect of the transaction between the defendant No.2 and defendant No.8. Rather it can be seen that initially the defendant No.2 i.e. present review petitioner has not filed written statement but later on he filed pursis at Exh.95 before the learned Trial Judge and adopted the written statement filed by the defendant No.1. Getting the sale deed executed by fraud is definitely within the personal knowledge or it requires his own knowledge to be pleaded and proved. It was not done, so also, he has not made such kind of prayer to the First Appellate Court. Merely by now saying that he was not properly represented, he cannot say that there is error apparent on the face of the record of this Court.

6 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 de novo

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." 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 fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."

7 Therefore, taking into consideration the scope of the review, provision of review, facts of the present case and the law laid down in above said authorities, this is absolutely not fit case where the order passed by this Court on 02.04.2019 deserves to be reviewed. Further, those observations are based on legal principle and to do the equality between the parties when the sale deed was executed by the defendant No.2 in favour of defendant No.8 on 19.05.1992 and till today he has not got it set aside by resorting to any legal remedy, then it cannot be the part of the present review. There is absolutely no merit in the application. It deserves to be rejected. Accordingly it is rejected with costs. In view of this, interim relief granted earlier stands vacated. Civil Application No.4554 of 2020 stands dismissed.

(Smt. Vibha Kankanwadi, J.)

Date : 03.08.2021.

Later on :

8 After dismissal of the Review Application, learned Advocate for the applicant prays for stay, as his client intends to approach a Higher Court.

9 In fact, in the Review Application all the things in detail have been dealt with and as to how the present applicant had not filed the appeal and then only on the basis of the observations, he has filed the Review Application. Taking into consideration the entire facts and circumstances of the case, his oral request for stay is rejected.

(Smt. Vibha Kankanwadi, J.)

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