

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.
MISC. CIVIL APPLICATION (REVIEW) NO.1094/2018 IN
SECOND APPEAL NO.312/2017

Smt. Sindhubai wd/o Baburao Kharwade and others.

Vs.

Smt. Vandanabai Kawduji Thaokar

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mrs. D.I.Charlewar, Advocate for applicants.
Shri M.PKhajanchi, Advocate for non-applicant.

CORAM :- A.S.CHANDURKAR, J.
DATED :- September 24, 2021.

Heard learned counsel for the parties.

According to the applicant, the trial Court having decreed the counter claim which was challenged by filing an appeal under Section 96 of the Code of Civil Procedure, 1908 and the appellate Court having observed that the findings recorded by the trial Court that the defendant had become owner of the property by way of adverse possession being not legal and proper, the said aspect ought to have been considered while deciding second appeal.

Perusal of the order under review indicates that this contention was not put-forth on behalf of the appellants when the second appeal was argued. It is not the ground raised in the review application that such submission was made but not considered by this Court. In the light of the observations in paragraph 13 of the decision in *Haridas Das Vs. Usha Rani Bankl (Smt.) and ors. (2006) 4 SCC 78* it would not be permissible to re-hear the second appeal on the aspect which was not urged when the second appeal was decided.

In that view of the matter, Miscellaneous Civil Application (R) No.1094/2018 stands dismissed.

JUDGE

Andurkar.