

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION (CIVIL) NO.273 OF 2017
IN AO/13/2017**

**ASHOK MANIK MIRKALE
VERSUS
ASHOK TULSHIRAM INGLE AND ANOTHER**

...
Advocate for Applicant : Mr. Shoyab Shaikh
Advocate for Respondent No.1 : Mr. Parag V. Barde
...

CORAM : MANGESH S. PATIL, J.

DATE : 21.03.2022

PER COURT :

By way of this application, the respondent in the Appeal from Order who are the defendants are seeking review of the judgment and order passed by this Court allowing the Appeal from Order, quashing and setting aside the judgment and order passed by the lower appellant court and confirming the judgment and decree passed by the trial court granting perpetual injunction in his favour to protect his possession over the suit property described as admeasuring 3 Hectare 25 Are.

2. I have heard the learned advocates of both the sides.
3. It is trite that a review cannot be an appeal in disguise. The entire argument of the learned advocate for the review petitioner would befit an argument in an appeal rather than in a review. For that matter the Review Application though appended with a certificate that it contains good grounds, I do not find any ground showing any formal defect or any other

circumstance which would entitle the review petitioners and even me to undertake the exercise of review.

4. The respondent who is original plaintiff filed a suit for injunction simplicitor. He averred that the land Gat No.408/2 totally admeasured 4 Hectare 27 Are out of which he was the owner in possession of 3 Hectare 25 Are which he described as suit property. By showing that a cart way intervened the suit property and the property of the review petitioners (the defendants) bearing Gat No.408/1 he complained about obstruction to his possession at their hands and prayed for injunction.

5. The trial court decreed the suit and granted injunction. The lower appellate court quashed and set aside the decree and remanded the matter with a direction to the trial court to direct a fresh measurement.

6. Admittedly, a measurement was carried out at the behest of the review petitioners by the TILR. Though there is dispute about the extent of the land Gat No.408, admittedly, a cart way intervenes the suit property and the property owned and possessed by the review petitioners. Though they did not dispute actual possession of the respondent/plaintiff, they complained about he having encroached over their property, the written statement is conspicuously silent as to when a cart way intervenes both these lands when and how the respondent/plaintiff could encroach over their land.

7. After appreciating the nature of the dispute, by the order under review, the Appeal from Order of the respondent/plaintiff was allowed and

the decree passed by the trial court broadly on the basis of the aforementioned reasoning has been restored.

8. To repeat, this Court cannot sit in appeal against its own order. The reasoning giving in the order under review is a plausible reasoning and the review petitioner has failed to demonstrate sufficient ground as is contemplated under Section 114 to under take a review.

9. There is no substance in the Review Petition. It is dismissed.

(MANGESH S. PATIL, J.)

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