

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10506 OF 2019

Sarjerao Sadashiv Padalkar

Since deceased through Legal heirs

Bhagirathi Sarjerao Padalkar and Ors.

.. Petitioners

Versus

Shamrao Aba Padalkar and Ors.

.. Respondents

-
- Mr. Vikrant Anand Desai i/by Mr. Suresh M. Kamble for Petitioners.
 - None for Respondents.
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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 23, 2022.

P.C.:

1. Heard learned Advocate for Petitioners.
2. The challenge in the present Writ Petition is to order dated 10.10.2018 passed below Exhibit-304 which is passed in Review Application of the order dated 28.06.2018 passed under Order 47 Rule 1 of the Code of Civil Procedure, 1908 ("CPC").
3. Perusal of the order dated 28.06.2018 indicates that the Trial Court had framed issues pertaining to the grievance of the Petitioners which read as under:-

- "1. Whether plaintiff has proved that suit properties are Hindu Joint family properties?"*
- "2. Whether defendant nos.1 to 6 have proved that the block no. 178/4A, 187/2, 187/6, 187/9, 185/1/1, 185/1/2, 185/2, 178/4B, 285/2 and 286/2 and house no. 933 are self acquired properties of late Sadashiv?"*

4. It was however further contended by Petitioners in their application under Order 47 Rule 1 that following two issues need to be additionally framed which are quoted as under:-

- “1. Does plaintiff prove that tenanted suit lands are ancestral tenant lands of plaintiff or self acquired of deceased Sadashiv?*
- 2. Does plaintiff further prove that the said tenanted land were purchased in the name of deceased Sadashiv, out of joint family funds for and on behalf of plaintiff, deceased Sadashiv and Ramchandra?”*

5. The Trial Court gave its findings as to why the aforesaid issues cannot be framed as desired by Petitioners. The findings of the Trial Court in paragraph Nos. 7 and 8 of its order are quoted below:-

- “7. On the perusal of said issues, it is a clear that the defendant nos.1 to 5 also admitted that the suit land are tenanted properties. So, defendant nos. 1 to 5 wants to decide whether it is a self acquired property of Sadashiv or joint family property of Aaba, by way of framing additional issues. It is a pertinent to note here that one R.C.S. 682/2009 (Old R.C.S. No. 424/1991) filed by the legal heirs of Dadu Maruti Padalkar against Sadashiv and after his death, his legal heirs i.e., defendant nos. 1 to 5 in present suit for partition and perpetual injunction. The said suit decreed by trial court on 04.07.2001. On the aggrieved by findings on issue nos. 1 to 3 in the said civil suit, he preferred appeal against these issue nos. 1 to 3. They specifically contended that the Ld. Court has wrongly hold that suit properties are joint family properties and finding recorded by Trial Court that suit lands are joint family properties and not self acquired properties of defendants i.e., legal heirs of deceased Sadashiv, is wrong. It is a pertinent to note here that the Hon'ble District and Sessions Judge, Islampur dismissed the said appeal bearing no. R.C.A. No. 55/2001. Therefore, it is clear that the finding of trial court that the suit properties are joint family properties and not self acquired properties of deceased Sadashiv.*
- 8. Once the finding of issue is decided in a suit, by passing judgment and decree cannot raise same issue in the subsequent suit as per Section 11 of Civil Procedure Code. Therefore, these issues cannot be framed again in the present suit.”*

6. It is noted that there is reference to the decree of the Trial Court dated 04.07.2001, *inter-alia*, deciding the issue as to whether the suit properties were ancestral properties or self acquired properties involved therein. Further, perusal of the issues framed by the Trial Court in the suit shows that the Plaintiff has been called upon to prove as to whether the suit properties are Hindu joint family properties or otherwise.

7. In that view of the matter, if Petitioners were aggrieved by the order 28.06.2018, then Petitioners ought to have challenged the said order in appeal. Instead, Petitioners chose to seek review the said order. Admittedly, scope for review of order is very narrow, restricted and limited. It is settled law that review can only be in respect of discovery of new and important material or evidence or any mistake/error apparent on the face of record or for any other sufficient reasons. This does not imply that “any other sufficient reasons” can enable the Petitioners to file review in the nature of Appeal.

8. Perusal of order dated 10.10.2018 passed below Exhibit-304 shows that it is a reasoned order and hence it does not call for any interference whatsoever. The said order is sustained.

9. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]