

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR

Miscellaneous Civil Application (Review) No.951/2019

IN

Second Appeal No.354/2014

Deorao s/o Laxman Bawne & Ors.

**..Versus..**

Baban s/o Keshao Padal & Ors.

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Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's Orders

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Shri R.S. Charpe, Advocate for the Appellants.

Shri Gaurav Singh Sengar, Advocate for Respondent No.1.

**CORAM : S.M. MODAK, J.**

**DATE : 7<sup>th</sup> JUNE, 2022.**

1. Heard learned Advocate for the applicants/appellants/original defendants and learned Advocate for respondent No.1/original plaintiff.

2. This Court, as per the order dated 18<sup>th</sup> March, 2015 was pleased to dismiss the second appeal for the reason that no substantial question of law is involved. The appellants' grievance is that, in fact, substantial questions of law were involved and this Court ought to have framed those questions and then ought to have dealt with second appeal on merits.

3. According to the appellants, this is an error apparent on face of the record and hence exercise of review jurisdiction by

this Court under Order 47 of the Code of Civil Procedure is warranted.

4. Learned Advocate for respondent No.1 has opposed the prayer for the reason that there are limitations on exercise of review jurisdiction and it is different from appellate jurisdiction. According to him, no in depth enquiry is contemplated while dealing with review jurisdiction.

5. Learned Advocate for the appellants relied upon various judgments on the point of exercise of review jurisdiction, on the basis of facts when substantial question of law needs to be framed, on whom burden to prove a particular fact rests and the lacunae in defendant's case does not help the plaintiff in proving this case.

6. My attention is invited to the judgments in the cases of Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by L.Rs. and Ors.<sup>1</sup>, Thungabhadra Industries Vs. Government of A.P. represented by the Deputy Commissioner of Commercial Taxes, Anantapur<sup>2</sup> and Narendra Gopal Vidyarthi Vs. Rajat Vidyarthi<sup>3</sup>. Whereas, learned Advocate for respondent No.1 relied upon a judgment in the case of S. Bagirathi Ammal Vs. Palani Roman Catholic Mission<sup>4</sup>.

1 2008 AIR(SC) 2033

2 1964 AIR(SC) 1372

3 2009 AIR(SCW) 1756

4 2008 AIR (SC) 719

7. It is true that review jurisdiction can be exercised in limited contingencies. One of them is, when there is error apparent on the face of the record, review jurisdiction can be resorted to. I have perused the order passed by this Court dated 18<sup>th</sup> March, 2015, thereby dismissing the second appeal. It is true to say that this Court has not framed any substantial question of law. In fact, it was held that no substantial question of law is involved. On this background, it will be material to consider the provisions of Section 100 of the Code of Civil Procedure.

8. As per sub-section 1 of Section 100, second appeal is maintainable if the High Court is satisfied that it involves a substantial question of law. Furthermore, sub-section 4 of Section 100 mandates the High Court to formulate substantial question of law if High Court is satisfied. In other words, if there is no satisfaction, then there is no need to frame substantial question of law and by way of natural corollary, question of admitting the appeal does not arise. That is why, the second appeal is different from the proceedings of the first appeal.

9. No doubt, it is true that if the facts and circumstances warrant framing of substantial question of law and if they are not framed and if the second appeal is dismissed, it can certainly be said that that is error apparent on the face of the record. The issue does not rest there. We have to see whether the satisfaction arrived at by this Court while dismissing the appeal is warranted or not.

When I perused the record, it reveals that on one hand, the plaintiff is claiming to be the exclusive owner of the suit land on the basis of Inami Patta granted by the Government to his father Keshao Padal and on the other hand, defendants claim that they are the joint owners of the suit land along with the plaintiff. They have also pleaded that they were in joint cultivation in the suit land and by way of convenience, the Inami Patta was granted in the name of Keshao Padal-father of the plaintiff. They have also pleaded that the suit land was divided as per the partition effected during the lifetime of the Keshao Padal.

10. Both the parties have adduced evidence before the trial Court. The emphasis of the appellants is on the conduct of the plaintiff in not producing a single document except 7/12 extract. What is the evidentiary value of the 7/12 extract is well-settled. Certainly, it is not the document of title.

11. The contention of the appellants is that the trial Court instead of commenting on the lacunae in the case of the plaintiff has put more stress on lacunae in the case of defendants and ultimately gave benefit to the plaintiff and decreed the suit. According to respondent No.1, these are the issues relating to merits of the matter and are not open for challenge during review jurisdiction.

12. The first Appellate Court has also dismissed the appeal

preferred by these appellants. On this background, second appeal is filed. It is true that prior to dismissing the appeal on 18<sup>th</sup> March, 2015, notices were issued to the respondents. The appeal was not admitted. When the order is perused, what we find is that this Court has taken a note of the findings by both the Courts below as to “theory of partition in between Keshao Padal and his two brothers was not accepted by both the Courts below”. This Court also observed that recording of one son’s name by Revenue Officer is of no consequence to outsiders. One can very-well say that this Court has taken a note of fact of concurrent finding. Even though the order may not be well reasoned order, the fact that this Court has looked into the concurrent finding by both the Courts below is of utmost importance.

13. This Court must have seen the record prior to taking a note of this concurrent finding. So, what I feel is that the grievances of the appellants may be right, but I do not think that they can be considered in a review jurisdiction. Whether the plaintiff was required to ask for declaration as to ownership on the background that his exclusive ownership is challenged by the defendants cannot be a ground, which now can be taken during review jurisdiction. That ground was very-well available to the appellants when the second appeal was argued. There is no grievance that though it was argued, was not considered by this Court while dismissing the second appeal. The grounds not canvassed may be taken before Apex Court but not now in a review

jurisdiction. There is vast difference between review and appellate jurisdiction. No case is made out for exercise of review jurisdiction.

14. For the above discussion, I am not referring the various judgments referred by the appellants. I do not think that there is an error apparent on the face of the record. Hence, I am not inclined to exercise review jurisdiction. Hence, the miscellaneous civil application is dismissed. Parties to bear their own costs.

**JUDGE**

Vijay