

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO.98 OF 2023
IN
WRIT PETITION NO. 14746 OF 2019

Janabai Alias Dwarkabai Janardhan Kalwaghe ...Applicant

Versus

Bajirao Sopanrao Gondkar (Deceased)
Through his L.Rs. Lahanubai Bajirao Gondkar
And Others ...Respondents

Mr. S.S. Deshmukh, Advocate for the applicant.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 25th APRIL, 2023

ORDER :

1. The present application is filed seeking review of the order passed by this Court on 11.01.2023, thereby allowing the writ petition filed by respondents No. 1 and 2/original petitioners.

2. Learned advocate for the applicant by relying on earlier order dated 25.03.2019 passed by this Court in Writ Petition No. 5028/2018, submits that this Court in para 9 of the said order held thus:

"9. It requires no mention that the Court dealing

with the final decree application is bound to consider the two branches of the families and would accordingly define the shares of the parties falling under the respective branches.

3. Subsequent to the passing of this order, respondents/petitioners challenged the order dated 02.11.2019 passed by the Executing Court in Final Decree Application No. 3 of 2019, thereby rejecting application of execution of decree dated 21.07.2012 and for handing over their one-half share by appointing Court Commissioner. According to the learned advocate for the applicant, this Court while passing the judgment under review has misread and misconstrued paragraph No. 9 of order dated 25.03.2019 passed in Writ Petition No. 5028 of 2018. According to him it is for the decree holder to implead all the branches of coparceners who were not before the Executing Court. He therefore, submits that this amounts to an error apparent on the face of record and therefore, order dated 11.01.2023 is required to be reviewed.

4. In paragraphs 10, 11 and 12 of the order under review, this Court has held:

“10. In my opinion, on careful reading of the order of this Court dated 25.03.2019, this Court directed

the Executing Court to consider the two branches of the families and accordingly define the shares of the parties falling under the respective branches and there is no direction to the Petitioner to implead all the coparceners in the final decree proceedings. The decree dated 21.07.2012 determined the Petitioner's one half share and the rights of the petitioner to possession of one half share cannot be kept in abeyance, particularly when there is no participation in the final decree proceedings from Petitioner's branch of family. The rights of the parties from the Respondent Nos. 3 and 4's branch of family will have to be determined out of their one half share.

11. Here is a case where the original suit was filed in the year 1993 and in spite of judgment and decree of the year 2012, the Petitioners are unable to reap the benefits of the decree even after lapse of 11 years from the date of the decree in their favour. Learned counsel for respondent nos. 1 and 2 is attempting to canvass the rights of other coparceners who have not participated in the final decree proceedings and every attempt is being made to stall the final decree proceedings.

12. The preliminary decree has declared the shares of the parties and the property is required to be partitioned in accordance with those shares by Commissioner appointed in this behalf. The preliminary decree declares the share of the Petitioner to be one-half share and the partition has to be effected in accordance with the declaration of share."

5. After going through the aforesaid paragraphs, I do not find any merit in the submission of learned advocate for the applicant. The applicant or left out coparceners have their remedies open.

6. While arguing the review petition, the same arguments, which were advanced at the time of hearing of the writ petition and which were considered and dealt with by this Court in the judgment under review, are repeated. This review petition appears to be an appeal in disguise. The applicants have repeated old and overruled arguments, which had concluded by the judgment under review. No case is made by the applicant for review. The application being devoid of merit is dismissed.

7. At this stage, learned advocate for the applicant prays for continuation of stay granted by this Court in order under review. The stay granted by this Court in order under review shall continue to operate for further period of four weeks from today. After efflux of that period, the stay shall automatically stands vacated.

[NITIN B. SURYAWANSHI, J.]