

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

**65 REVIEW APPLICATION (CIVIL) NO.243 OF 2023
IN SA/82/1992**

**SHRIMANT S/O PANDHARI BHUTEKAR THROUGH POWER OF ATTORNEY
BALIRAM
VERSUS
DEVIDAS S/O PANDHARI BHUTEKAR (DIED) HIS LRS TOLABAI AND
OTHERS**

Mr.PS. Dighe h/f. Mr. V.R. Dhorde, Advocate for the applicant.
Mr.S.V. Natu, Advocate for respondent Nos.1-A to 1-I and 2.

**CORAM : KISHORE C. SANT, J.
DATED : 03.10.2023**

PC :-

01. Heard learned Advocates for the parties at length. This application is filed for review of the judgment and order passed by this Court in Second Appeal No.82 of 1992 dated 04.06.2018. Present application is by the appellant/original plaintiff in the suit bearing RCS No.192 of 1978 that was filed for declaration of ownership in respect of suit land and for perpetual injunction. Plaintiff No.1 and defendant No.1 and two more parties, namely, Nagnath and Shukracharya are the brothers. Their father Pandhari died leaving behind ancestral properties in two villages, namely, Tugaon and Gowardhanwadi, Tq. and Dist. Osmanabad. It was case of the plaintiff that he was exclusive owner and he was in possession of land Gat Nos.8 and 21

that he had received in the partition executed long back. It was case of defendant No.1/present respondent that there was no such partition.

02. It is specific case of the plaintiff that the partition was already effected, however, the deed was not registered. The lands at Gowardhanwadi were given to defendant No.1. The plaintiff and other brothers were given the lands at Tugaon. It is further case that defendant No.1 had applied for mutation entry in the year 1966 on the basis of unregistered partition deed and mutation entry No.222 was also sanctioned. In this background suit was filed in the year 1978 for declaration. The learned Trial Court accepted the theory of partition and decreed the suit on 30.07.1982. Against the decree, appeal was preferred by defendant No.1 and same was allowed by the District Court. Present applicant being aggrieved filed second appeal and the same came to be dismissed.

03. The applicant against the order had even approached the Hon'ble Apex Court by filing SLP (Civil) Diary No.37420 of 2018 and the same came to be dismissed. It is, thereafter the present application came to be filed. The learned Advocate for the applicant vehemently argued that this Court has not

considered the existence of the partition deed. He draws attention to para No.8 of the judgment, wherein it is observed that there is no specific pleading about the execution of the partition deed and the appellant/plaintiff and his witnesses have not given any particulars as to how and when actual partition had taken place. He submits that in para 3 of the plaint that there is specific mention of the partition deed. He accepts that said deed is not registered. However, he relies on judgment in the case of **Shiromani Appellant Vs. Hemkumar and Ors. Respondent reported in AIR 1968 SC 1299**, wherein the Hon'ble Apex Court has held that though the partition deed is not registered, still it can be considered to the extent of considering intention on the part of the coparceners. In other words, the proof that the parties ceased to be joint from the date of instrument. The learned Advocate thus submits that this Court has considered the document of partition, which was rightly considered by the Trial Court. He thus submits that the finding recorded by this Court is in error so far as observation that there is no specific pleading about execution of the partition deed. He submits that on these basis this Court even refused to look into the document of partition and that, in his submission, there is error apparent on the face of record.

04. The learned Advocate Mr. Natu for respondent/original defendant No.1 argued that though the Trial Court has considered the alleged partition deed, it was considered only for the collateral purpose. The Appellate Court in its judgment has specifically doubted the very existence of the document itself. Mere pleading about document is one thing and to prove said document and the contents is other thing. He submits that the plaintiff has not even shown that at any point of time the parties have acted upon the said document. The submissions of learned Advocate Mr. Dighe that mutation entry was taken on the basis of application by defendant No.1 himself is also not correct. Subsequently in the revenue proceeding the said entry was cancelled and therefore this argument will also not be helpful to the petitioner.

05. This Court has considered the arguments and submissions. At the outset learned Advocate Mr. Dighe has fairly submitted that except above, there is no other ground for filing the review application. This Court has considered the judgment passed by this Court. Looking to the scope of review, this was necessary to show error apparent on the face of record. From the judgment it is seen that the Court has considered the submissions about

partition deed and has specifically recorded conclusion that the plaintiff has failed to prove the so called partition deed by giving any evidence. So far as the judgment in the case of **Shiromani (Supra)** is concerned, the Hon'ble Apex court has observed that partition deed though was unregistered, can be considered for the purpose of looking to the intention of the parties. However, the judgment would not be applicable to the present case as in the present case the First Appellate Court as well as this court has specifically doubted existence of the partition deed itself. There is nothing on record to show existence of the document except the submissions that on the basis of so called partition deed, defendant No.1 himself had filed an application for taking mutation entry in his name. Even said Mutation Entry No. 222 is subsequently cancelled and this fact is also accepted by the parties.

06. In this view of the matter, this Court finds that there is no case made out to entertain the review. No error apparent on the face of record is pointed out. Present application is devoid of merit and same is dismissed accordingly. Pending Civil Application, if any, stands disposed off.

[KISHORE C. SANT, J.]