

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 163 OF 2022

1. Smt. Rukhminibai Janardan Rahinj
2. Shri. Chandrakant Janardan Rahinj

APPLICANTS
[Org. Petitioners]

VERSUS

1. Shri. Vitthal Balwant Bhavar
2. Shri. Pundlik Balwant Bhavar
3. Shri. Babasaheb Pandurang Bhavar
4. Shri. Ravsaheb Pandurang Bhavar
5. Shri. Bhausaheb Pandurang Bhavar
6. Shri. Bhausaheb Laxman Hargude
Died through Legal heirs
- 6-A. Latabai Bhausaheb Hargude
- 6-B. Sudhir Bhausaheb Hargude
- 6-C. Manjusha Mahendra Bornare
- 6-D. Smita Sanjay Bhusal
- 6-E. Mahesh Bhausaheb Hargude
7. Shri. Pandurang Balwant Bhavar
8. Nazar and Administrator, Kopargaon
9. Nazar and Administrator, Shrirampur.
10. Hon'ble Civil Judge Junior Division Court, Ahmednagar
11. Hon'ble Civil Judge, Junior Division Court, Shrirampur
12. Hon'ble Court of Hon'ble Chief District Judge, Ahmednagar
13. Kamgar Talathi, Gondegaon
14. Circle Officer, Undirgaon
15. Tahsildar, Ahmednagar.
16. The Collector, Ahmednagar
17. Shri. Balasaheb Janardan Rahinj
18. Shri. Manihar Mahadu Rahinj
Died Through Legal Heirs
- 18A. Rausaheb Manohar Rahinj
- 18B. Jalinder Manohar Rahinj
- 18C. Ramesh Manohar Rahinj
- 18D. Sau. Mirabai Somnath Rakte
- 18E. Rahibai Somnath Bhand
19. Shri. Chandrabhan Mahadu Rahinj

Died through Legal heirs
19A. Revaji Chandrabhan Rahinj
19B. Sunita Daulat Lande

RESPONDENTS

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Mr. Mukul S. Kulkarni, Advocate for the Applicants.
Mr. C.K. Shinde, Advocate for respondents No. 8 to 12.
Mr. Umesh Mitkari, Advocate for respondents No. 17, 18A to 18E,
19A and 19B.
Mr. S.R. Yadav Lonikar, AGP for respondent - State

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 21st JUNE, 2023
PRONOUNCED ON: 17th JULY, 2023

ORDER :

1. By this application, applicants seek review of the judgment and order passed by this Court on 04.02.2022, in Writ Petition No. 12964 of 2017.

2. By the petition filed under Article 227 of the Constitution of India, petitioners challenged the judgment and order dated 10.07.2016, passed by learned District Judge-1, below Kaccha Register No. 202 of 2017 and judgment and decree passed by learned Civil Judge, Senior Division, Shrirampur, dated 31.03.2017 on the plaint which is registered in Kaccha Register No. 105 of 2017 and sought direction that the suit be decided on merits. This Court after hearing the parties, by elaborate judgment dismissed the writ petition by upholding the orders impugned therein.

3. Heard the learned advocate for the applicants, learned advocates for the respondents and learned Assistant Government Pleader for State. Perused the application, grounds raised therein, annexures thereto, the judgment under review and the citations relied on by the learned advocate for the applicants.

4. Learned advocate for the applicants strenuously argued that the property while was in custody of the Court receiver, was wrongly transferred to third person and that is challenged in the suit. By relying on Order 41 Rule 3 of CPC, he submits that after registration of the suit, only thing to be ascertained is that, whether the cause of action is mentioned in the suit or not and the Trial Court cannot reject the plaint on merits, even before registration. He submits that Section 85 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'said Act') bar's the jurisdiction of the civil Court, however, under Section 85A of the said Act, Civil Court is empowered to refer such issue to the competent authority and till then proceedings of the civil suit are to be stayed. Therefore, bar provided under section 85 is not an absolute bar to entertain the suit by the Civil Court. He submits that since the property was taken over and

was in custody of administrator appointed by the Civil Court, provisions of the said Act have no application to the facts of the present case. Therefore, findings recorded that the suit is barred under section 85 are perverse. Reliance is also placed on para 8 and 10 of Civil Manual which sets out the ground when the plaint can be rejected. He further submits that the Appellate Court has erred in rejecting the appeal by considering the merits, even before its registration. Further submission is that the issue of limitation is a mixed question of law and facts, and therefore, this Court could not have held that the suit was time barred.

By relying on Salim D. Agboatwala Vs. Shamalji Oddhavji Thakkar and Ors., MANU/SC/0657/2021, Shakti Bhog Food Industries Ltd., Vs. The Central Bank of India & Ors., MANU/SC/0468/2020, Rajendra Bajoria and Ors., vs. Hemant Kumar Jalan and Ors., MANU/SC/0678/2021, Chaya W/o Anant Devkat Vs. Nil., Writ Petition No. 3228/2013 and Kacharu Baban Kothawade and Ors. ,Vs. State of Maharashtra and Anr, 1970 BCI (0) 26, he submits that the impugned judgment is liable to be reviewed.

5. Learned advocate for the respondents No. 8 to 12 on the other hand supported the judgment under review. He

submits that all these points were argued and considered by this Court while deciding the writ petition and no case for review is made out by the applicants.

6. This Court in para No. 10 to 15 of the judgment under review has considered the point of cause of action. In para 13, it is held that "the plaintiffs are challenging the order passed in Estate Case No. 1/1945 dated 23.05.1945, the suit for declaration and mandatory injunction is found to be absolutely time barred. On this ground, by specifically invoking provision of Order 7 Rule 11(a) & (d), the plaint came to be rejected, since it is without any cause of action and is an attempt of clever drafting to create an illusion about the cause of action but since it suffers from an inherent defect, it will not entitle the plaintiffs for any relief after going through the procedural rigmarole and since the court was lacking inherent jurisdiction to determine the claim sought in the plaint, the learned Judge has refused the relief and by invoking provision under Order 7 Rule 11 (a) & (d) rejected the plaint and directed the decree to be drawn accordingly."

7. In para 12 of the judgment under review it is observed that, 'the Trial Court has recorded that this is

ultimately a suit for eviction and in the wake of the provisions of Tenancy and Agricultural Lands Act, 1948, particularly Section 85, the jurisdiction of the civil court is expressly barred.'

8. The Trial Court as well as the Appellate Court have recorded concurrent finding of fact against the applicant and this Court in judgment under review has held against the applicant.

9. The points now sought to be urged by the applicants were argued and considered by this Court. Learned advocate for the applicants has tried to argue the matter, as if he is arguing the writ petition, which is not permissible in law.

10. In "***T. N. Electricity Board and Another V/s V. N. Raju Reddiar and Another***" AIR 1997 SC 1005, the Apex Court has deprecated this practice. The Apex Court has held that -

"When an appeal / special leave petition is dismissed, except, in rare cases where error of law or fact is apparent on the record, no review can be filed, that to by the advocate on record who neither appeared nor was party in the main case, it is salutary to note that Court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage.

This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession.”

11. 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 application appears to be an appeal in disguise. The applicants have repeated old and overruled arguments, which had concluded by the judgment under review.

12. It is settled legal position that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction. [Vide *Kamlesh Verma Vs. Mayawati and Others*, (2013) 8 SCC 320].

13. In State of *West Bengal and Others Vs. Kamal Sengupta and Another*, (2008) 8 SCC 612, it is held:

“22. The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court-tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

14. In the case in hand, judgment under review cannot be corrected on the ground that different view could have been taken by the Court on the point of fact or law and this Court cannot sit in appeal over its own judgment while exercising review jurisdiction.

15. In *Lily Thomas and Others vs. Union of India and Others* (2000) 6 SCC 224, it is held:

"52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273 held that the power of review is not an inherent power. It must be

conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error"

Present review application does not meet the above criteria.

16. Learned Single Judge of this Court in Writ Petition No. 3228/2013, has held that, *'it is trite that bundle of facts constitute cause of action and note a mere statement. As far as jurisdiction is concerned, the Court has to frame an issue of jurisdiction and thereafter decide the suit.'*

There cannot be any dispute about the above legal position, but the facts of the present case are different and therefore, aforesaid decision does not help the applicant.

17. In Kacharu Kothawale (supra), there was no material on record that the proclamation was issued as required by Section 10 or was published in the gazette. The District Judge

merely acted on the report sent by the revenue authorities without applying his mind to the legal requirements of Section 10 and the procedure to be followed thereunder which is laid down in paragraph 264 at page 88 and paragraph 267 at page 89 of Volume 1 of the Civil Manual issued by this Court.

This Court found fault with the procedure followed by the District Judge, which was in ignorance of provisions of Hindu law applicable to that case. Such are not the facts of the present case.

18. In Salim Agboatwala (supra), the Apex Court held that, '*rejection of plaint on the ground of limitation is mixed question of fact and law*'. Bar of jurisdiction under section 85 of the Maharashtra Tenancy and Agricultural Lands Act, 1948, was also considered and it was held that '*whenever the suit is instituted despite the bar under section 85, in view of section 85A of the said Act, at the first stage the Civil Court should stay the suit and refer the issues to the competent authority under the Act for determination.*'

This decision can be distinguished on facts as the applicant has failed to spell out any cause of action against all the defendants.

19. It is pertinent to note that though the judgment under review is dated 04.02.2022 and review is filed on 04.03.2022, the same circulated only on 06.06.2022 i.e. after the learned Judge who has passed the judgment under review completed her visiting assignment here and went back to the Principal seat. Thus, when the Court which passed the judgment under review was available, the matter was not circulated. This sole ground is sufficient to dismiss the review application. There is no merit in the review application. Review application is therefore dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]