

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 241 OF 2023 IN
SECOND APPEAL NO. 989 OF 2022

Shri Bharat Deorao Pawar

Applicant

Versus

Shantabai Ashok Pawar & others

Respondents

Mr. Mukul Kulkarni, Advocate holding for Mr. A. H.Koralkar,
Advocate for the applicant.

Mr. Shaikh Tarek Mobin H., Advocate for respondent No. 2.

CORAM : R. M. JOSHI, J.
RESERVED ON : 25th OCTOBER, 2023.
PRONOUNCED ON : 3rd NOVEMBER, 2023.

ORDER

1. This application is filed under Section 114 of read with Order XLVII of Code of Civil Procedure for review of judgment dated 25th April, 2023, passed in Second Appeal No. 990/2022.

2. At the outset, it needs to be recorded that at stage of admission by consent of both sides, appeal was decided after answering substantial question of law framed.

3. Applicant is appellant in the second appeal. Present application for review of the impugned order is sought on following three points :-

(i) That this Court has not dealt with the submissions made by learned counsel for the appellant with regard to Order VII Rule 11 of Code of Civil Procedure that non-grant of relief amounts to rejection thereof.

(ii) That the issue raised about protection of transaction prior to amendment to Section 6 of Hindu Succession Act has not been dealt with and decided.

(iii) Without filing any appeal or cross-objection findings recorded by the Appellate Court on the point of provisions of Hindu Minority and Guardianaship Act are reversed erroneously.

4. In order to appreciate submissions, it would be relevant to take note of Section 114 and Order XLVII of Code of Criminal Procedure which read thus :-

Section 114 Review : Subject as aforesaid, any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code' or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit

Order XLVII : Review

1. Application for review of judgment – (1) Any person considering himself aggrieved,-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

- (2) x x x
- 2. x x x
- 3. x x x
- 4. x x x
- 5. x x x
- 6. x x x
- 7. x x x

5. The aforesaid provision clearly shows that review of any order / judgment is permissible in case error is shown on the face of its record or any new evidence is procured or hand is laid thereon which make findings recorded unsustainable or for any sufficient reason. The law on the point of review thus is fairly settled. It is only in case where there is error apparent on the face of record is found in the order, the review is permissible. It is not permitted to re-agitate the issues which are dealt with in the judgment impugned or issues sought to be raised afresh. The Court, while dealing issuing the order is not expected to take upon it the task of assessment / re-assessment of the order impugned like the Appellate Court. Keeping in mind the provisions of law and the law settled with regard to review, present application is decided.

6. Applicant herein does not claim discovery of any new evidence being found in order to seek review of the order nor this is a case wherein for any other sufficient reason impugned judgment deserves to be reviewed. The only point remains for consideration is as to whether there is any apparent error on the face of record to exercise powers of review.

7. At the outset, it needs to be recorded that the issue about no declaration being given by the learned Trial Court in respect of the challenge to the sale-deed has been dealt with in detail in paragraph No. 11 of the impugned judgment. Reference to Section 11(v) of Code of Civil Procedure is misplaced. Said provision is reproduced for ready reference which reads thus :-

11.Res judicata.-

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised' and has been heard and finally decided by such Court.

Explanation V.-Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the

purposes of this section, be deemed to have been refused.

The provision is self explanatory as it is only restricted to application of Section 11 for the purpose of resjudicata. The same has no application to the facts of the case. As already elaborately dealt, there is clear finding recorded by Trial Court that sale-deed in question does not bind plaintiffs. Thus, there is no substance in the submissions that review of judgment is necessary in respect of said issue.

8. As far as the issue raised with regard to transaction took place prior to the amendment of 2005 to Section 6 of Hindu Succession Act is concerned, in the impugned judgment this Court while answering substantial question of law has held that the sale deed in question is voidable at the instance of minor daughters of vendor, Shantabai and that it is held to be not binding to their share. Needless to state that disposition of property prior to 20th December, 2004 must be a valid disposition and not invalid/void one. Thus discussion in the judgment therefore sufficiently covers the issue raised. This Court, therefore, finds no reason to hold that the sale

deed to the extent of minors is covered by proviso and Section 6(1) of Act. No review of judgment is called for on this ground.

9. Next contention regarding upsetting the findings recorded by the First Appellate Court with regard to provisions of Hindu Minority and Guardianship Act also does not have merit as this Court is within its jurisdiction to render finding while answering substantial question of law on divergent findings recorded by Trial Court and First Appellate Court in connection with the said Act. In this regard reference can be made to judgment of Hon'ble Apex in case of Balasubramaniam and another vs. M. Arockiasamy, (2021) 12 Supreme Court Cases 529, wherein it is held thus :-

“16. In view of the above, although the counsel for the appellant may be technically correct in his submission that the High Court erred in not clearly answering the question of law framed by it under Section 100 CPC, the High Court was still within its jurisdiction to determine whether the reading of the evidence on record by one of the courts below was perverse. Question of law for consideration will not arise in abstract but in all cases will emerge from the facts peculiar to that case and there cannot be a straitjacket formula. Therefore,

merely because the High Court refers to certain factual aspects in the case to raise and conclude on the question of law, the same does not mean that the factual aspect and evidence has been reappreciated. As already noted, the divergent view of the courts below on the same set of facts was available before the High Court.

10. In view of above discussion, this Court finds no error apparent on the face of record in order to review the judgment impugned. Hence, review application stands dismissed.

(R. M. JOSHI)
Judge

dyb