

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

**904 REVIEW APPLICATION (CIVIL) NO.111 OF 2022
IN SA/160/2018**

MADHUKAR ARJUNRAO WAGHMODE
VERSUS
DHARMARAJ APPARAO PATTE AND OTHERS

...
Mr.Dhananjay P. Deshpande Advocate for Applicant.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 24th FEBRUARY, 2023

ORDER :

1. Present Review Application has been filed praying to review the order passed by this Court in Second Appeal No.160 of 2018 decided on 1st September 2021, thereby this Court dismissed the Second Appeal holding that there are no substantial questions of law arising as contemplated under Section 100 of the Code of Civil Procedure.
2. Heard Mr. Deshpande, learned Advocate appearing for the review applicant.
3. It is not even necessary to issue notice to respondents.

However, it will not be out of place to mention here that learned Advocate Mr. G.C. Navandar holding for learned Advocate Mr. A.M. Gholap submits that since the matter was disposed of, the Vakalatnama of Mr. Gholap has come to an end and he has no instructions to appear for the respondents.

4. Learned Advocate for the review applicant submits that this Court, while considering the facts, lost sight of the fact that both the parties had admitted the execution of sale deed dated 15th June 1984 in which there is a specific mention of boundary on the western side as public road. Therefore, there was no question of proving the same by anybody. The further observations of this Court, therefore, are wrong because when it was realized that the correction is necessary, the correction deed has been executed. No doubt there was gap of nine years but till then it was not in question. When the burden could not have been on the plaintiff to prove the said fact, the point could not have been answered against the plaintiff.

5. At the outset, reliance can be placed on the decision in ***Thungabhadra Industries Ltd. vs. Government of A.P., AIR 1964 SC 1372, (Three Judges Bench)***, wherein it has been held that a review cannot be in disguise of appeal. If this

Court had erred in assessing the facts which in fact could not have been the question, as the scope of Section 100 of the Code of Civil Procedure would be mainly on the substantial question of law and therefore, it was observed by this Court that this Court cannot go into the questions of facts in detail. Still only those facts were considered which were agitated and could have had some effect on the case, but for the reasons stated in Paragraph No.5 it was considered how the plaintiff has failed to prove further. Even the plaintiff had also come with the fact that defendant Nos.1 and 2 have unauthorizedly and illegally committed encroachment to the extent of 20 x 50 sq. feet area. The findings of both the lower Courts were considered wherein it was observed that in spite of opportunities given, the plaintiff had not produced the sanctioned layout of the property belonging to defendant No.3. Now it has been tried to be submitted that there was no sanctioned layout at all. Important point to be noted is that if there is no sanctioned layout, then how the plaintiff was saying that there is an encroachment, is a question and secondly if there is no sanctioned layout, then there can be definitely a different way to prove the extent of encroachment, which ought to have been undertaken by the plaintiff before the trial Court.

6. There is no error apparent on the face of record which needs to be corrected by way of review. The Review Application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

asb/FEB23