

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO.2 OF 2023
IN
WRIT PETITION NO.6019 OF 2022

Mukhtar Khan Badshah Khan Pathan
and another

.... Applicants

Versus

Salimabi Sayyed Musa
and another

.... Respondents

.....

Mr. Shaikh Tarek Mobin H., Advocate for the Applicants
Mr. Shaikh Mujtaba Gulam, Advocate for Respondent No.1

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 24th APRIL, 2023

ORDER :

1. This application is filed by the applicants seeking review of the order passed by this Court on 05/12/2022, thereby rejecting the writ petition filed by the petitioners, challenging the order dated 04/04/2022 passed by learned 8th Joint Civil Judge, Senior Division, Aurangabad, below Exhibit-66 in Regular Civil Appeal No.932 of 2016.

2. By the said application, applicants prayed for appointment of Court Commissioner to measure the suit property.

3. This Court after hearing the parties, and after perusing the record dismissed the writ petition, holding that the applicants have measured the land, and measurement map is before the Trial Court. The TILR, who measured the land has been examined on behalf of the applicants. The application for appointment of Court Commissioner is filed by the applicants at the fag end of the trial, and therefore, it amounts to misuse of process of law.

4. The present review appears to be an appeal in disguise. The grounds raised in the present review application were argued before this Court at the time of decision of the writ petition. Arguments advanced on behalf of the applicant, at the time of arguing the Writ Petition were negated. The applicant has repeated old and overruled arguments, which were concluded by the judgment under review. There is no material error, manifest on the face of record or error apparent on the face of record, which results in miscarriage of justice. The applicants have failed to point out any error apparent on the face of record to exercise review jurisdiction.

5. It is settled legal principle that the judgment under review cannot be corrected merely because, according to the applicants, it is erroneous in law or a different view could have been taken by this Court, on a point of fact or law.

6. Learned advocate for the applicants has placed reliance on *Vachhalabai and others Vs. Chinkaji and others; 2012 (3) All M.R. 91, Sahebrao Rama Yadav and others Vs. Sarjerao S/o Rama Yadav; 2014 (6) Mh.L.J. 553*, and *Rajender Singh Vs. Lt. Governor, Andaman and Nicobar Islands and others; AIR 2006 SC 75*.

7. The rulings cited by the applicants are in respect of need to appoint the Court Commissioner in land dispute, admissibility of map under Section 83 of the Evidence Act, exercise of power under Order XXVI Rule 9, and in respect of appointment of Court Commissioner. Those are not applicable to the facts of the present case. No case is made out by the applicants for review.

8. Review application being devoid merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE