



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Misc. Civil Application (Review) No. 879 of 2023
in
Second Appeal No. 387 of 2018 (Decided)

Ashok S/o Govindrao Suryawanshi
Versus
Sanjay Prabhakar Tute and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.L.Khapre, Senior Advocate assisted by
Shri Abhay Sambre, Advocate for the applicant.
Shri C.S.Kaptan, Senior Advocate assisted by Shri P.S.
Chauhan, Advocate for the respondents.

CORAM : ANIL S. KILOR, J.
DATED : 11th SEPTEMBER, 2023.

Heard.

2. By this application, the review is sought of the judgment and order dated 29th April, 2022 on two grounds. Firstly, the findings in paragraph 30 are contrary to the oral evidence and secondly, the reliance placed on the judgment in the case of *Pemmade Vs. Youngmen's Vysya Asso.*¹ is not applicable to this case.

3. Shri Khapre, learned Senior Advocate points out that the payment of Rs. 5,50,000/- was

¹ 2015(6) Mh.L.J. 487

proved and established by oral evidence and therefore the findings recorded by this Court on the point of readiness and willingness is contrary to the record.

4. He further submits that in absence of any challenge to the decree denied against the defendant no.3, no appeal was preferred and therefore, thereby the applicant has given up his challenge against the defendant no.3 and therefore, as per the judgment in the case of *Manzoor Ahmed Magray Vs. Gulam Hassan Aram and others*², it is permissible to pass a decree to the extent of share of the co-owners who failed to perform their part of contract.

5. On the other hand, Shri Kaptan, learned Senior Advocate pointed out that at the time of passing of the judgment sought to be reviewed, it was the specific case of the applicant that the suit was not for specific performance but it was for execution of sale-deed and now by arguing about the readiness and willingness, the complete new case has been introduced.

6. He further submits that dismissal of the appeal is not solely based on the findings recorded in relation to the judgment in the case of *Pemmade Vs. Youngmen's Vysya Asso.* (supra). He therefore submits that considering the scope of review and further the fact

2 AIR 2000 SC 191

that Special Leave Petition carried against the judgment sought to be reviewed, was dismissed by the Hon'ble Supreme Court of India, this Court may not review the judgment.

7. In the light of rival contentions of the parties, I have perused the record and the impugned judgment and order.

8. In paragraph 12 of the judgment of this Court, has recorded the contentions of the learned counsel for the applicant that the suit was for execution of sale-deed and not for specific performance. This Court accordingly, has considered the evidence in this regard and thereupon has reached to the conclusion that the plaintiff has failed to prove his case for execution of sale-deed as argued by the learned counsel for the applicant.

9. Moreover, the reasons recorded in paragraph 30 are not only the reasons for dismissal of the second appeal and similarly it relates to the second submission made by the learned Senior Advocate for the applicant in respect of judgment of *Pemmade Vs. Youngmen's Vysya Asso.*

10. In that view of the matter, considering the scope of review, I do not find any merit in the present application. Accordingly, the application is rejected.

11. At this stage, Shri Khapre, learned Senior Advocate seeks protection for two months, which request has been strongly opposed by the non-applicant. It is submitted that Special Leave Petition has already been dismissed in this matter.

12. Thus, considering the fact that Special Leave Petition was already dismissed, I do not find any reason to grant protection for two months. Accordingly, the said request is rejected.

[ANIL S. KILOR, J.]