

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

MISC. CIVIL APPLICATION NO. 758/2022

Shri Istari s/o Gorayya Atkurwar (dead) through Lrs. Smt. Ramabai wd/o Instari Atkurwar
and others

Vs.

Smt. Saroj Hanumansingh Chandel through her Power of Attorney Shri Hanumansingh
Chandel

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

Court's or Judge's orders

Shri R.M. Sharma, Advocate for appellants
Shri A.R. Kalraiya, Advocate for respondent

CORAM : SMT. M.S. JAWALKAR, J.

DATE : 02/03/2023

The present Review Application is filed being aggrieved and dissatisfied by the judgment and order dated 27/09/2022, passed by this Court in Second Appeal No. 182/2006, whereby the judgment and order passed in Special Civil Suit No. 967/1991, dated 04/05/1996 passed by 6th Joint Civil Judge, Senior Division, Nagpur, is confirmed and judgment and decree passed by 6th Adhoc District Judge, Nagpur in Regular Civil Appeal No. 332/1996 is set aside.

2. The non-applicant filed suit for specific performance of contract. The non-applicant is the member of Joint Hindu Family and Hanumansingh is her husband. It is

the case of the plaintiff/ non-applicant that the suit property is the self acquired property of Gorayya Atkurwar. Father-in-law of the appellant, Laxmansingh was tenant of suit house for more than 20 years. Gorayya instituted proceedings for obtaining permission to issue eviction notice against Laxmansingh. During the pendency of the said rent control proceedings, Gorayya expressed his intention to sell the suit property and in the month of April, 1990, a proposal was sent to the husband of the non-applicant through one Ambadas Bomratwar. After negotiations, the consideration was set at Rs.45,000/-. On 11/05/1990, an agreement of sale was executed by the deceased Gorayya. An amount of Rs.10,000/- was paid by plaintiff through her husband and it was agreed that balance amount of Rs.35,000/- shall be paid within a period of two months. By way of abundant precaution, signatures of Gorayya's sons i.e. defendant Nos. 1 and 3 were also obtained on an agreement along with Gorayya. At the time of signing to the agreement, defendant No.2 was not available. Gorayya assured to obtain his signature. Unfortunately, Gorayya died within 2-3 days after the agreement. After death of Gorayya, the defendants avoided to execute sale-deed though the plaintiff was ready to perform her part of contract. Therefore, a legal notice was sent on 18/09/1990. Ultimately, the appellant was required to file a suit for specific performance of contract which is numbered as Special Civil Suit No. 967/1991. The suit was

contested by the defendants with a defence that the property in question is not a self acquired property of the deceased Gorayya, and the marriage of defendant No.3 as well as Rajani, daughter of the defendant No.1 was fixed on 11/05/1990 and therefore, they were in need of money. They approached Laxmannsingh, father-in-law of the non-applicant for advancing amount under a document dated 11/05/1990, which is not the genuine agreement of sale.

3. The learned Trial Court after appreciating the evidence on record and documents, passed the judgment and decree dated 04/05/1996 and pleased to decree the suit directing the non-applicant to pay an amount of Rs.35,000/- in the Court within a period of three weeks and then it was ordered that the defendants shall jointly execute the sale-deed in favour of the plaintiff. The defendants against this judgment and order preferred Regular Civil Appeal No. 332/1996. Lower Appellate Court allowed the appeal filed on behalf of the defendants and thereby dismissed the suit filed by the non-applicant. Being aggrieved and dissatisfied by the aforesaid judgment, the non-applicant preferred a second appeal which was allowed by this Court. The aforesaid judgment and decree is the subject matter of challenge in the present application.

4. It is the contention of the applicant that since the

present non-applicant while arguing the second appeal, did not at all challenge the findings on the ground of readiness and willingness, no substantial question of law concerning the same was framed and findings on the issue of “readiness and willingness” as given by the learned Appellate Court and in favour of the defendants/present applicants have attained finality.

5. It is submitted that in view of the above, although the three substantial questions of law have been answered in favour of the appellant/present non-applicant, the second appeal could not have been allowed in the entirety and the specific performance could not have been granted.

6. Learned Counsel for applicants relied on following citations:

- 1) ***S. Bagirathi Ammal Vs. Palani Roman Catholic Mission, reported in (2009) 10 SCC 464.***
- 2) ***Perry Kansagra Vs. Smriti Madan Kansagra, reported in (2019) 20 SCC 753.***
- 3) ***J.P. Builders and another Vs. A. Ramadas Rao and another, reported in (2011) 1 SCC 429.***

7. The Counsel for the non-applicant supported the judgment and decree passed by this Court and stated that this Court has rightly appreciated the facts, circumstances and

evidence placed on record and had rightly confirmed the judgment of Trial Court. Hence, no need to review the same.

8. Learned Counsel for non-applicant relied on following citations:

1) *Shanthi V. T.D. Vishwanathan and others, reported in AIR Online 2018 SC 685.*

2) *Devaraju Pillai Vs. Sellayya Pillai, reported in AIR 1987 SC 1160.*

9. I have heard both the parties, considered the judgment and order passed by this Court.

10. The learned Counsel for the applicant relied on *S. Bagirathi Ammal (supra)*, however it supports the case of the non- applicant, wherein the Hon'ble Apex Court held that an error contemplated under the Rule 1, Order 47 must be such which is appears on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence or something more than a mere error and which must be manifest on the face of the record. Similar view is taken in *Perry Kansagra (supra)*, relied on by the Counsel for applicant.

11. The learned Counsel also relied on *J.P Builders (supra)*, in support of his contention that Section 16(c) of the Specific Relief Act mandates readiness and willingness on the

part of the plaintiff and it is condition presided for obtaining relief of grant of specific performance.

12. Order 47, Rule 1 require some condition to be fulfilled before filing review application. However on perusal of the application, I do not see any requirement is satisfied to invoke review jurisdiction of this Court. There is no case made out to review the judgment and decree passed by this Court.

13. All the contentions of the parties are taken into consideration. There is no discovery of new facts or important matter or evidence which after the exercise of due diligence was not within the knowledge of applicant nor any apparent error pointed out by the applicant. Review application can be entertained when statutory parameters laid down under Order 47 read with Section 114 of the Code of Civil Procedure are satisfied. As such, the application is liable to be rejected. Application stands dismissed. Interim order granted in appeal to continue for another four weeks.

(SMT. M.S. JAWALKAR, J.)