



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 REVIEW APPLICATION (CIVIL) NO. 42 OF 2023
IN SECOND APPEAL NO. 471 OF 2019

1. Dada Patil Mohan Kotkar,
Age 67 years, Occ.: Agriculture,
R/o At Post Nimblak, Tq. Nagar,
Dist. Ahmednagar,
2. Asarabai Bansi Sapre,
Age 57 years, Occ. : Household
and Agriculture,
R/o At Post Nagpur, Tq. Nagar,
Dist. Ahmednagar.

APPLICANTS
(Ori. Defendants)

VERSUS

1. Bhimabai Sukhdeo Lande,
Age 82 years, Occu. : Household,
R/o At Post Nimblak Tq. Nagar,
Dist. Ahmednagar.
2. Chandrabhaga Rambhau Nannaware,
Age 72 years, Occu. Household,
R/o At Post Niwadunge,
Tq. Pathardi, Dist. Ahmednagar.

... **RESPONDENTS**
(Orig. Plaintiffs)

...
Advocate for Applicants : Mr. N.C. Garud

...
CORAM : Y. G. KHOBRAGADE, J.

DATE : 14.03.2024

PER COURT :

1. Heard the learned counsel for the applicants at length.
2. By the present application, the applicants have put forth prayer

clause 'A' and 'B' as under :-

'A' To allow this Review Application.

'B' To set aside the Judgment and order dated 23.12.2022 in Second Appeal No. 471/2019 passed by this Hon'ble High Court and thereby above said Judgment and order be recalled or reviewed and consequently suit filed by the present respondents be dismissed in toto."

3. The learned counsel appearing for the applicants submits that while passing judgment and decree dated 23.12.2022 in Second Appeal No. 471/2019 with Civil Application No. 9678 of 2019, this Court (Coram : Rajesh S. Patil, J.) observed in paragraph Nos. 22, 24, 25, 26 and 27 as under :-

22. The claim of Aasarabai-2, that pursuant to Mutation Entry she became owner of suit property, does not hold good, as the Supreme Court in Suraj Bhan and others Versus Financial Commissioner SLP (C) 7688 – 7689 of 2004, has held that revenue entries are only for fiscal purpose.

24. The sale Deed dated 10.08.1992, executed by Aasarabai – 2, in favour of Mohan kotkar, does not record any recitals as to what was the legal necessity for Aasarabai-2, to sell the entire suit property. It is not the case of Aasarabai –2 that she had obtained consent from plaintiff before executing the sale deed.

25. The plaintiff have argued that they got knowledge of sale deed on 11.08.2006, when they obtained certified copy of sale deed. The defendants were not able to prove the prior knowledge

of plaintiffs. The suit is filed on 12.10.2006. Hence, the suit is filed within limitation.

26. In view of evidence recorded, it is clear that plaintiffs have together 2/3rd undivided share in the suit property, therefore, the sale deed dated 10.08.1992, to that extent is not valid. Therefore, no fault can be found in appellate Court's judgment and order dated 21.06.2018.

27. No substantial question of law arises in this Second Appeal and the same is dismissed."

4. The learned counsel for the applicants submits that this Court passed the judgment and order dated 23.12.2022 by considering the registered sale deed dated 10.08.1992 executed by Asarabai in favour of Mohan Madhav Kotkar and mutation entry has been recorded vide entry No. 1292(63) and during the life time of both the vendors and vendee, there was no challenged to the registered sale-deed executed between them and subsequently Regular Civil Suit No. 463/2006 filed by the present respondents / original plaintiffs for partition, possession, declaration and permanent injunction against the present applicants though there is recital in the sale-deed that Asarabai second sold the suit property consideration which already accepted by her for her household expenses. However, the age of Asarabai Sadashiv Korade (Asarabai second) was shown 60 years old in the year 1992 and she

was issueless, hence for her survival she sold the suit property but the learned appellate Court wrongly held that there is no recital as well as legal necessity to that effect and this Court wrongly confirmed said decree. Therefore, it is necessary to review of the judgment and order dated 23.12.2022.

5. It further canvassed for the plaintiff No.1 categorically admitted that her son Jagannath who had collected copy of sale deed from the Revenue Authority and he was aware about the fact that the suit property owned by Shri Sadashiv Korade. Under these circumstances when the M.E. No. 226 recorded in the year 1960 with revenue record, the sale-deed was already executed in the year 1992. Therefore, the plaintiffs at the belated stage are not entitled to claim about not binding of sale-deed upon them to the extent of their shares. Therefore, finding in this respect is bad in law.

6. It further submits that as per the observation made by this Court in paragraph 27 of the judgment that no substantial question of law arises in Second Appeal and the Second Appeal would have been dismissed on the ground that, the pleadings as well as the evidence of both the parties. So also, considering the finding recorded by the learned first appellate Court, no question of law involved in the present

appeal. However, this Court wrongly recorded finding and passed the order. Hence, it is necessary to review the judgment.

7. The learned counsel for the applicant further canvassed that the name of Asarabai was recorded being a sole owner of suit property in the year 1960 and on 10.08.1992 she executed registered sale deed in favour of Mohan Madhav Kotkar. The plaintiffs filed a suit on 12.10.2006 i.e. much after the death of said Asarabai. Therefore, suit of the plaintiffs is barred under Article 109 and 110 of the Limitation Act. However, this Court wrongly recorded findings that the suit is within limitation. Therefore, it is necessary to review the judgment and order dated 23.12.2022.

8. In support of these submissions the learned counsel appearing for the applicants placed reliance in the case of ***Sanju Pershad Ramdev Sahu Vs. Jwaleshwari Pratan Narain Singh, AIR 1951, SC 120, Santosh Hazari vs. Purushottam Tiwari, AIR 2001, SC 965.***

9. Section 114 of the Code of Civil Procedure provides for review of judgment / order which reads as under :-

*“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”.*

10. I have gone through the record. Taking into consideration of grounds set out in the present application as well as scope of Section 114 of the Code of Civil Procedure, present application for review is not maintainable because by the present application, the applicants are trying to challenge the judgment and order dated 23.12.2022 passed by this Court by pointing out the evidence and facts of the case which have been already considered by the trial Court, first appellate Court as well as this Court by invoking jurisdiction under Section 100 of the Code of Civil Procedure.

11. In the case of ***Union of India Vs. B. Valluvan AIR 2007, Supreme Court 210***, the Hon'ble Apex Court held that the jurisdiction to review its own judgment, as is well well known, is limited. The High Court, indisputably, has a power of review, but it must be exercised within the framework of Section 114 .

12. In the case of *State of Orissa and others Vs. Commissioner of Land Record and settlement, AIR 1998 Supreme Court 3067* and in case of *Sajjan Singh Vs. State of Rajasthan, AIR 1965 Supreme Court 845*, it has been held that a judgment or order once pronounced finally, cannot be altered or changed. Therefore, once judgment or order has been passed by a Court after hearing the parties, a review of such order must be subject to the rules of the same and cannot be lightly entertained. This view is supported by judgment in case of *Sow. Chandra Kanta Vs. Sheik Habib, AIR 1975, SC 1500*. In the case in hand after hearing both the sides on 23.12.2022, this Court passed an order (Coram : Rajesh S. Patil, J.), who now is presently sitting at the Principal Seat at Mumbai).

13. However, the applicants having appropriate remedy to challenge the judgment and order passed by this Court before the appropriate forum available in the law. Therefore, grounds set out for review of judgment and order does not appear to invoke Section 114 of the Code of Civil Procedure.

14. In view of the above discussion, the Review Application is dismissed. No order as to costs.

(Y. G. KHOBRADE, J.)