

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.1 OF 2024
IN
SECOND APPEAL NO.603 OF 2022

Haribhau Thaku Randive

....Review Petitioner

V/S

Chandrashekar Namdev Wajge

....Respondent

Ms. Rohini Wagh with Mr. Manoj Bachate, Mr. Omkar Sambherao,
Mr. Satish Pawar *for the Review Petitioner.*

Mr. Vilas B. Tapkir *for Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATE : MARCH 6, 2024.

P.C.:

1 The Review Petition is filed seeking review of order dated 16 October 2023 passed by this Court dismissing Second Appeal No.603 of 2022.

2 I have heard Ms.Wagh, the learned Counsel appearing for the Review Petitioner and Mr. Tapkir, the learned Counsel appearing for the Respondent.

3 The Review Petition is filed essentially on the ground of discovery of new document in the form of cancellation deed dated 22 July 1991 by

which the agreement for sale dated 14 January 1991 was apparently cancelled.

4 It is sought to be contended by Ms. Wagh, learned counsel appearing for the Review Petitioner that this documents is signed by the Plaintiff alone who choose to suppress the same from Court. Relying on the judgment of the Apex Court in *S.P. Chenaglvarya Naidu vs. Jagannath*, 1994 AIR 853 and *Puttagangamma vs. Varija*, 2003 DgLaw (SC) 1830 and *Major Gen. Darshan Singh vs. Brij Bhushan Chaudhary* in Civil Appeal No.9360 of 2013 decided on 1 March 2024, she would contend that it was the duty of the Plaintiff to disclose all the documents relating to dispute and since he chose to suppress a vital document from Court, he must bear consequences thereof. She would submit that non-production of the cancellation deed dated 22 July 1991 would have material bearing of the outcome of the decision. If the said cancellation deed was in the knowledge of the Appellant at the time of decision of the Second Appeal, the same would have materially altered the outcome of the Second Appeal. She would submit that the contents of cancellation deed would clearly indicate that the consideration shown to have been paid towards agreement for sale dated 22 July 1991 is actually not paid. She would further submit that the land is of the joint family and could not be sold by the Appellant alone.

5 I have considered the submissions canvassed by Ms. Wagh and by Mr. Tapkir.

6 Perusal of the order dated 16 October 2023 would indicate that the Appellant raised a specific plea before this Court about existence of Agreement dated 14 January 1991 under which land admeasuring 4 acres from Survey No.171/2 was agreed to be sold for consideration of Rs.1,25,000/-. This Court took note of the said Agreement dated 14 January 1991 and held that even if Agreement dated 14 January 1991 was to be disclosed, the same would not have been made any difference on the outcome of the litigation.

7 Petitioner thus raised a plea in the Second Appeal about suppression of previous agreement dated 14 January 1991. Now he contends that the agreement dated 14 January 1991 was cancelled vide agreement dated 22 July 1991, which also was suppressed by the Plaintiff. If the case of the Appellant is to be believed, the agreement dated 14 January 1991 got cancelled by execution of subsequent agreement dated 22 July 1991. This would mean that the agreement dated 14 January 1991 did not have any effect after execution of the cancellation deed dated 22 July 1991. I am therefore unable to comprehend as to what difference production of the cancellation deed dated 22 July 1991 would made to the outcome of decision in the dispute between the parties.

8 This Court has already held that the previous agreement dated 14 January 1991 was inconsequential to Plaintiff's claim for specific performance of the agreement for sale dated 22 July 1991. For the same

reason, non-production of cancellation deed dated 22 July 1991 would also not make any difference on Plaintiff's entitlement to get the subsequent agreement dated 22 July 1991 specifically performed, especially in the light of the fact that the Appellant did not dispute execution of the agreement dated 22 July 1991.

9 It must be borne in mind that the Appellant was in Second Appeal before this Court. He cannot be permitted to produce fresh documents each time the proceedings are taken up for hearing. During the course of hearing of the Second Appeal, it appears that the Appellant relied upon agreement dated 14 January 1991 submitting that the same was suppressed. Now by filing a Review Petition he contends that the agreement dated 14 January 1991 was cancelled and the cancellation deed was suppressed. There is no evidence on record either about the agreement dated 14 January 1991 or about cancellation of the transaction on 22 July 1991. Even if it is assumed for the sake of arguments that the Appellant indeed did not have knowledge about existence of cancellation deed dated 22 July 1991, he could have at least led evidence about the transaction that allegedly took place on 14 January 1991 and the fact that the same was cancelled subsequently on 22 July 1991. Non possession of copies of documents is one thing and knowledge about effecting termination is altogether different aspect. It therefore cannot be said that the information with regard to execution of either agreement dated 14 January 1991 or its cancellation on 22 July 1991 were not in the knowledge of the Appellant. The plea of discovery of new document therefore is totally misplaced.

10 I find the Review Petition to be gross abuse of process of law. The Review Petition is accordingly rejected.

(SANDEEP V. MARNE, J.)

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