



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 8 OF 2014
IN
SECOND APPEAL NO. 493 OF 2013

Dhanaji Shamrao Argade

.. **Petitioner.**

Versus

Sahebrao Shamrao Argade (since deceased),
through LRs. and Ors.

.. **Respondents.**

Mr. R.S. Apte, Senior Advocate i/by Mr. N.V. Vechalekar, for Review-Petitioner.
Mr. Drupad S. Patil, for the Respondents.

Coram : Sharmila U. Deshmukh, J.
Date : April 22, 2024.

ORDER :

1. The review jurisdiction of this Court has been invoked seeking review of the order dated 8th January, 2014 passed in Second Appeal No.493 of 2013.

Factual matrix:

2. Second Appeal No.493 of 2013 was instituted by the original defendant challenging judgment dated 5th February, 2009 passed by the Appellate Court in Civil Appeal No.215 of 2009 allowing the appeal filed by the Plaintiff reversing the judgment of Trial Court dismissing RCS No.72 of 2002.

3. Regular Civil Suit No.72 of 2002 was instituted by the plaintiff i.e. Sahebrao Shamrao Argade against the defendant i.e. Dhanaji Shamrao Argade for declaration that the suit property i.e. Gat No. 245 situated at Mouje Shirgaon. is the self acquired property of Sahebrao and for injunction restraining the Defendant from encroaching upon the said property. It appears that during the pendency of the proceedings by way of amendment, additional relief by way of prayer clause C-1 was incorporated seeking direction to the defendant to handover vacant and peaceful possession of the encroached portion i.e. East-West side 55 feet width and South-North 320 feet to the plaintiff.

4. Trial Court vide judgment dated 5th February, 2009 dismissed the suit. As against this, Regular Civil Appeal No.215 of 2009 was preferred by original plaintiff and the Appellate Court by judgment dated 7th September, 2012 allowed the Appeal and directed the defendant, *inter alia* to remove the cattle-shed and the house erected by him on eastern portion of land and to vacate within a period of two months. As against the judgment of the 1st Appellate Court Second Appeal No.493 of 2013 was preferred before this Court. Vide order dated 8th January, 2014 this Court dismissed the Second Appeal holding that no substantial question of law arose for determination. Against the dismissal of the Second Appeal, Special Leave Petition No.5864 of 2014 was filed before the Apex Court and the Apex Court passed the following order on 10th March, 2014, which reads thus:

"Learned counsel for the petitioner states that some issues were canvassed before the High Court in respect whereof no findings have been recorded by the High Court. In that view of the matter, learned counsel for the petitioner states that she may be

permitted to withdraw the instant petition with liberty to move the High Court for filing a review petition.

The Special leave petition is accordingly dismissed as withdrawn with liberty as aforementioned."

5. The present review petition was thereafter filed before this Court.

SUBMISSIONS:

6. Mr. Apte, learned Senior Advocate appearing for the Review-Petitioner would point out the order of the Apex Court granting liberty to file the present Review Petition. He would point out the facts leading to filing of the Special Leave Petition before the Apex Court. He points out paragraphs No.3 of the review petition and would submit that new evidence was discovered subsequently i.e. the subsequent Special Civil Suit No.1251 of 2009 filed by the legal heirs of Shamrao Argade i.e. the father of the Review Petitioner and the Respondent in which the present Respondent is one of the Plaintiffs. He submits that the Plaintiffs seek partition of suit properties therein which includes Gat No.245. He submits that in the earlier round of litigation, the present Respondent had taken contrary stand that he is owner of property which was not brought to the notice of this Court at the time of hearing of the Second Appeal No.493 of 2013. He submits that by virtue of discovery of new and important evidence which could not be produced in spite of exercise of due diligence at the time when the order in second appeal was passed, the order dated 8th January, 2014 is required to be reviewed.

7. *Per contra*, Mr.Patil, learned counsel appearing for the respondents raises an objection as to the maintainability of the review petition itself. He submits that the review is sought on the ground of discovery of new and important evidence which could not be produced at the time when the order dated 8th January, 2014 was passed. He submits that the second Special Civil Suit No.1251 of 2009 was filed in the month of July, 2009 i.e. after the dismissal of the RCS No.70 of 2002 by the Trial Court. He submits that in the said proceedings, the Review Petitioner has filed written statement on 9th November, 2009. He submits that in the written statement, the defendant has admitted that the properties are partitioned in the year 1980 itself and that Gat No.245 was given to the share of Sambhaji Argade from whom the Plaintiff claims to have purchased the suit property. He further submits that having filed his written statement, the defendant was well aware of the filing of the suit and thus it could not be said that the same was not within his knowledge or could not be produced at the time when the order was passed. He would further point out that an application was made by the Respondent herein on 15th April, 2014 seeking deletion of his name for the reason that his signature was obtained in the subsequent suit by misrepresentation. He submits that the said application came to be allowed by the Trial Court and thus, he had abandoned the suit which was thereafter dismissed for want of taking steps for filing of evidence. He submits that this order was passed on 12th June, 2018 and till today, there is no challenge to the said order. He relies upon the decision of this Court in the case of ***Janaradan Pandurang Lipane and Ors. vs. Sadhu Davji Lipane and Ors., [2004 (4) Mh.L.J. 1129]***.

8. In rejoinder, Mr.Apte, learned Senior Advocate would submit

that even if the said proceedings were within his knowledge at the time when the order under review was passed the provisions of Order 41 Rule 7 permit exercise of review jurisdiction for sufficient reason also. He submits that considering the facts of the case, it is clear that contrary stands have been adopted by the Respondent and as such substantial question of law arises and the order of 8th January, 2014 dismissing the appeal is required to be reviewed. Mr.Apte would further point out that the Advocate on record has filed an affidavit in support of the review petition stating that the Advocate has not raised the issue of filing of partition suit by the plaintiff or submitted a copy of the plaint before this Court in Second Appeal for consideration, however copy of the subsequent suit was handed over to the Supreme Court lawyers and he is unable to state whether the Advocates appearing before the Apex Court has raised plea of the subsequent suit.

9. I have given my thoughtful consideration to the submissions and have perused the record including the judgment under review and order of Apex Court.

10. It appears from the order dated 10th March, 2014 passed by the Apex Court in the Special Leave Petition that the submission before the Apex Court was that some issues were raised before the High Court in respect whereof no findings have been recorded by the High Court and permission was sought to withdraw the Petition with liberty to file review petition. The Apex Court permitted withdrawal of the Special Leave Petition with liberty as prayed.

11. After obtaining liberty from the Apex Court, the present Review Petition has been filed on completely new ground. The Review

Petition does not set out any grounds pointing out submissions which were canvassed before this Court in earlier round of litigation which were not considered by this Court. The only ground pleaded is in paragraph No.3 of the review petition as under:

*“3) The respondent herein has filed another civil suit no. 1215 of 2009 now it is renumbered as civil suit no. 81 of 2012 in the month of July 2009, after judgment and order pass by the lower Court in this matter. It is respectfully submitted that it is pointed out by the respondent herein that the suit properties / lands are not divided by metes and bound and therefore, filed the suit for division of properties before the civil judge senior division at Pune and now suit is pending before the Honorable Civil Judge, Junior Division at Vadgaon. **The Petitioner has pointed out the above said facts before the Honorable Supreme Court of India and this point is not raised before the appellate Court or in the second appeal in the High Court Judicature at Bombay for consideration. ...**”(emphasis supplied)*

12. The pleading in the present Review Petition is that the Apex Court was made aware that the filing of subsequent suit was not brought to the notice of High Court. However from the order of 10th March, 2014 it cannot be discerned that any such submission was raised before the Apex Court. On the contrary liberty was granted by the Apex Court to file review in view of the specific submission advanced that findings were not rendered by High Court on issues canvassed by the Review Petitioner. It is thus clear that the limited window was granted by the Apex Court for filing review petition to urge the submissions canvassed in respect of which no findings were rendered in earlier round of litigation.

13. It must be noted that routinely review petitions come to be

filed after seeking liberty from the Apex Court on the premise that the issues canvassed were not considered by the High Court. The present case goes one step further and after persuading the Apex Court to grant liberty to file review petition has thereafter filed the present Review Petition on completely new ground which was admittedly not raised in the earlier round of litigation. The Affidavit of the Advocate on record confirms this position that the issue of filing of partition suit was not raised by the Respondent in earlier round of litigation.

14. Before proceeding further it would be relevant to reproduce the Order 47 Rule 1 of the Code of Civil Procedure, 1908 (for short, "CPC"), providing for review of judgment, which reads thus:

"1. Application for review of judgment.— (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the

decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

Explanation.— The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.”

15. Plain reading of the provision would indicate that for purpose of seeking exercise of review jurisdiction, no appeal should have been preferred against the order under review. The possibility of the maintainability of the Review Petition on the grounds of review pleaded after the order has been challenged *sans* the liberty granted by the Apex Court is indeed questionable. Taking note of the liberty granted by the Apex Court to file Review Petition, I have considered the submissions advanced despite the objection by learned counsel for the Respondent.

16. Coming to the merits of the matter, the only submission advanced by Mr. Apte is that as the subsequent suit for partition filed by the legal heirs of Shamrao in which the Respondent is one of the Plaintiff includes Gat No.245, the earlier stand taken by the Respondent that the property was his self acquired property is contrary to the stand taken in the subsequent suit. For that purpose few dates which are required to be noted is that the Civil Suit No.72 of 2002 was dismissed on 5th February, 2009, appeal was preferred by Plaintiff on 7th September, 2012. The subsequent suit for partition

was filed in July, 2009 and written statement was filed by the Review Petitioner on 9th November, 2009 i.e. during the pendency of the first appellate court proceedings.

17. The subsequent suit i.e. Special Civil Suit No.1251 of 2009 was filed by the legal heirs of deceased Shamrao in which the Respondent is shown as Plaintiff No.4. The Respondent herein filed an application on 15th April, 2014 to strike out his name from the suit as his consent was obtained by misrepresentation. The order of Trial Court records that the say of the Defendants was called for but no reply was filed. Consequently, the application came to be allowed and the name of Respondent was struck out. The suit was also dismissed for want of taking steps. As there was no response by the Defendant to the application, the contention of Respondent remains uncontroverted that his signature was obtained by mis-representation. The Respondent herein was one of the Plaintiffs in that suit and upon the Respondent's name being struck out by the Trial Court, it cannot be said that contrary stand was taken in respect of Gat No 245 which would necessitate exercise of power of review. The admitted position is that there is no challenge to the order dated 15th April, 2014 striking out the name of the Respondent from the subsequent suit for partition.

18. Mr. Patil has rightly placed reliance of decision of this Court in the case of ***Janaradan Pandurang Lipane*** (supra) where this Court was considering the issue whether the appellant in Second Appeal can seek to produce additional evidence in support of their claim to the suit property. Learned Single Judge has held thus in paragraph 11:

"11. Apart from the above facts, even on the point of law,

there is apparently no case for review on the ground of discovery of new materials. The order, which is sought to be reviewed in the proposed review application, has been passed in the Second Appeal. Though a ground of discovery of new materials can be a ground for review of an order passed at the original stage or even at the stage of first appeal, it can hardly be a ground at the stage of Second Appeal. It is settled law that the Second Appeal can be preferred only in case a party is able to make out a substantial question of law for consideration in the matter. Such point has to be disclosed from the materials on record and not on the basis of the additional evidence or extraneous materials. In the Second Appeal even appreciation of evidence already on record is not permissible except in a rare case, like the finding being totally perverse or contrary to the materials on record. The findings cannot be said to be perverse or contrary to the materials on record when the challenge is on the ground of failure on the part of a party itself to produce the evidence on record."

19. To salvage the situation Mr. Apte would contend that review can be sought even for sufficient reason. As held by the Apex Court in the case of ***Shri Ram Sahu vs. Vinod Kumar Rawat, [(2021) 13 SCC 1]*** the words "any other sufficient reason" appearing in Order 47 Rule 1 of CPC must mean "*a reason sufficient on grounds at least analogous to those specified in the rule*". it is settled that while in exercise of its review jurisdiction the Court exercises a very limited power circumscribed by the limitations enumerated under Order 47 Rule 1 of CPC and review proceedings are not by way of an appeal.

20. It is also settled that the review court does not sit in appeal over its own order and review jurisdiction constitutes an exception to the general rule of non-alteration of the judgment once it is signed or

pronounced. It is not demonstrated that there is any sufficient reason for this Court to exercise review jurisdiction. Particularly, considering paragraph No.3 of the review petition incorrectly pleading that the fact of the subsequent suit was pointed to the Hon'ble Apex Court. In my view, in the present case, the liberty granted by the Apex Court has been misused by the review-petitioner.

21. Resultantly, in light of the discussion above, there is no cause for review of the order dated 8th January, 2014 passed by this Court in Second Appeal No.493 of 2013. Review Petition stands dismissed.

22. In view of the dismissal of petition, Civil/Interim Application(s) taken out in this petition, if any, does not survive and same is disposed of.

23. At this stage, Mr. Apte, learned Senior Advocate seeks stay of this order for period of eight weeks. Mr.Patil, learned counsel appearing for the Respondent opposes the application and would submit that the proceedings have been pending since the year 2010. However, as there was an interim relief operating in favour of the review-petitioners, I am inclined to stay the present order for period of eight weeks from the date of uploading of this order on the official website of this Court.

[Sharmila U. Deshmukh, J.]