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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 10 OF 2024

IN

SECOND APPEAL NO. 688 OF 2018

WITH

INTERIM APPLICATION ST NO. 29511 OF 2024

IN

REVIEW PETITION NO. 10 OF 2024

Ashok Ramchandra Kutwal and ors

.....Petitioners

Vs.

Shantabai Laxman Kutwal and ors

.....Respondent

Mr. Sushant Prabhune advocate for the petitioner

Mr. G. N. Saluke with Mr. D. N. Gondhali for respondent nos. 1 and 2

Mr. Mahesh V. Rawool a/w Mr. S. S. Ghule for respondent nos. 4 to 6

CORAM : GAURI GODSE, J.

DATE : 22nd OCTOBER 2024

ORDER:

1. Heard learned counsel for the petitioner. This review petition is filed seeking review of the order dated 4th September 2024. By the said order, dismissal of the second appeal was recalled by condoning delay. After restoring the second appeal, it was heard on merits. By the said order, second appeal is dismissed.

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2. The impugned decree is for partition and separate possession. Learned counsel for the review petitioners submits that in paragraph 10 of the order under review, it is recorded that even if name of deceased daughter of Parvati was Lilavati or Kalavati, it would not make any difference in determination of the shares of both the sons of Parvati. Learned counsel for the review petitioners submits that the name of the daughter would make a difference for determination of the shares. He therefore submits that the reference in paragraph 10 needs to be corrected.

3. I do not find the said arguments as a ground to review the order. After verifying the impugned judgments, pleadings and evidence, the observations are made in paragraph 10. Even otherwise, there is no dispute that there were two independent personalities named Lilavati and Kalavati. The dispute between the parties is on the name of Parvati's daughter. Thus, the proposed corrections would not make any difference in determination of the shares as admittedly Parvati had only one daughter .

4. Learned counsel for the review petitioners further rely upon the application which is annexed at exhibit 'B' to the review petition. He submits that the said application was filed by Ramchandra for effecting

partition. He submits that the said document was in the custody of Ramchandra. However, after the order under review was passed, the review petitioners found the said document in the house from the old record. He submits that the said document goes to the root of the matter and thus, it is necessary to review the order and permit the review petitioners to rely upon the said document.

5. Learned counsel for the respondents points out that pursuant to the said application, partition was effected under section 85 of the The Maharashtra Land Revenue Code, 1966. He submits that the same was challenged in revenue proceedings. He further points out the paragraphs of the impugned judgments which refers to RTS Appeal No. 184 of 2007 which was filed against the mutation entry effected regarding partition pursuant to the said application. He submits that the issue regarding partition pursuant to the said application is already decided under revenue proceedings and referred to in the impugned judgments. He, thus, submits that the production of the said document cannot be a ground to review the order, as it will have no effect on the merits.

6. I have perused the impugned judgments again. Learned counsel for the respondents is right in submitting that the issue regarding

partition pursuant to the said document at exhibit 'B' was subject matter of challenge in RTS proceedings and it is referred to and examined in the impugned judgments.

7. Learned counsel for the review petitioners submits that the document at exhibit 'B' indicates the existence of Kalavati. He thus, submits that said document would go to the root of the matter.

8. At the cost of repetition, I find it necessary to record that it is not in dispute that Parvati had only one daughter. It is also not in dispute that she expired issueless. Thus, the name of Parvati's daughter being Kalavati or Lilavati would not make any difference for determination of the shares as it is nobody's case that Parvati had more than one daughter.

9. I do not find any reason to review the order dated 4th September 2024.

10. The review petition is dismissed.

11. After the order is dictated, learned counsel for the review petitioners insisted that the ground raised in clauses A and B on page 10 of the review petition are also required to be considered as it raises important ground to review the order.

12. The aforesaid grounds are already dealt with in the order under review which is clearly reflected in the order under review hence, there is no reason to review the order on the said grounds.

13. Learned counsel for the review petitioners seeks extension of interim protection that was continued by order dated 4th September 2024, while dismissing the second appeal. Learned counsel for the review petitioners in his praecipe has stated that the order dated 4th September 2024 was uploaded on 26th September 2024, However, the interim relief was continued for a period of eight weeks which would expire on 30th October 2024. Learned counsel for the review petitioners therefore requests that the interim protection granted be extended for further four weeks.

14. Since a request for extension of interim relief is made on praecipe giving date of order and date of uploading the order, I find it necessary to record that every day around 50 to 80 matters and at times 100 matters are called from the daily board. In the matters that are called out, short and long orders are required to be passed depending upon the stage and nature of the matter. This Court has the assignment of second appeals from the year 2011 pending for admission as well as for final hearing and matters of maintenance

including matters under The Protection of Women from Domestic Violence Act, 2005 and all orders passed by the Family Courts. Efforts are being made to give proportionate time to all the matters; old and new. This Court is required to work with the assistance of only three stenographers who work overtime without making any grievance. The court staff also works overtime without making any grievance. It is unfortunate that having full knowledge about the working conditions, such statements are made regarding time required for uploading orders. The lawyers need to understand that orders dictated in the open Court are not magically transcribed and that it takes time to correct the orders and upload the orders.

15. However, I am not inclined to refuse the extension of interim relief in view of the aforesaid statements made in the praecipe. Even on simple request, this Court has always granted extension of interim protection, to enable the aggrieved party to approach the Hon'ble Apex Court. The interim protection already granted is extended by further four weeks.

[GAURI GODSE, J.]