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RA 257.24 r.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO. 257 OF 2024
IN
SECOND APPEAL NO. 161 OF 2015**

**DAGADU S/O. SURJAN CHAUDHARI
SINCE DECEASED THROUGH LRs
VERSUS
SAJANBAI DODHA PARDESHI AND ANOTHER.**

...

Mr. V.D. Sapkal, Senior Advocate alongwith Mrs. Sabahat T. Kazi,
Advocate for applicants.
Mr. V.S. Badakh and Mr. Y.G. Gujarathi, Advocate for respondent No.1

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 2ND JANUARY, 2025.

P.C. :-

1. The applicants/original respondents in Second Appeal/ LRs of defendant No.1 are seeking review of the judgment and order dated 25.9.2024 passed by this Court in Second Appeal NO. 161 of 2015.
2. For sake of convenience, parties are referred to, as per their original status.
3. Brief facts giving rise to present review application can be summarized as under :-

Respondent No.1/plaintiff instituted a suit bearing R.C.S No. 96 of 2006, seeking relief of specific performance of contract based on

agreement to sale dated 22.6.2004, executed by defendant No.1-Dagdu with consent of defendant No.2-Padmakar, in respect of land Gat No. 70/1, situated at Village Ajande (Bk.), District Dhule, to the extent of area admeasuring 1 Hectare 46 R. The suit was contested by defendants. However, the trial court, upon hearing parties, decreed the suit directing LR's of defendant No.1 to execute sale deed of the suit property in favour of plaintiff in pursuance to agreement to sale dated 22.6.2004 by accepting balance consideration of Rs 35,000/- within a period of 3 months from the date of order. They were further directed to hand over actual physical possession of the suit property to plaintiff. The decree passed by trial court was assailed by LR's of defendant NO.1 in R.C.A. No. 273 of 2012 before the District Judge, Dhule. The first appellate court dismissed the appeal upholding the decree passed by trial court and further directed respondent No.2/defendant No.2 to sign the sale deed as a consenting party and issued further direction that parties to obtain prior permission, if at all needed for the sale deed from the appropriate revenue authority. The judgment and decree as passed by learned District Judge was assailed by the legal heirs of defendant No.1 in Second appeal No. 161 of 2015 before this Court, which came to be dismissed vide judgment and order dated 25.9.2024.

4. Mr. V.D. Sapkal, learned Senior Advocate alongwith Smt. Sabahat Kazi, Advocate appeared in the review application and submitted that case of plaintiff is based on SAUDA PAVATI Exhibit 87, which is a photo copy and as such, could not have been admitted in evidence in view of Section 64 of the Indian Evidence Act. However, this aspect was not brought to the notice of this Court, hence missed consideration. Similarly, learned first appellate court modified the decree

thereby granting additional reliefs in favour of plaintiff without cross-objection. Thus, appellate court has exceeded the jurisdiction. It is submitted that document Exhibit 87 is unregistered and insufficiently stamped and hence could not have been admitted in evidence. All the aforesaid aspects goes to the root of matter but missed consideration while disposing of second appeal. Learned Senior Advocate submits that in light of aforesaid facts order under review needs to be recalled and second appeal needs restoration and re-hearing.

5. The parameters as regards to exercise of jurisdiction of review have been recently set out by the Honourable Supreme court in the case of ***S. Murali Sundaram Vs. Jothibai Kanna and others reported in (2023) AIR (SC) Civil 1529***, wherein, the Supreme Court has observed in para. 5.1as under :-

“(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate. (v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit.'

6. In the light of aforesaid guidelines, this Court is not expected to exercise review jurisdiction as if sitting in appeal against its own order. Re-hearing of the matter is impermissible in law. The powers conferred under Order 47 Rule 1 read with Section 114 of the C.P.C. can be exercised only for correction of a mistake but not to substitute the view. This court is not expected to re-write the judgment by which the controversy is finally decided.

7. Now, turning back to the submissions advanced, it is contended that document Exhibit 87 was a photo copy insufficiently stamped, so it could not have been admitted in evidence. It is apparent that similar contentions were not raised before this Court at the time of hearing of second appeal. Even, no objection was raised before the trial court for admission of document in evidence. It was accordingly admitted and exhibited. Mr. Y.G. Gujarathi on the basis of trial court's record confirms that Exhibit 87 is original document, therefore, there is no substance in contention that photo copy of document was admitted in evidence. Secondly, in light of Section 35 of the Maharashtra Stamp Act, 1958, once the document is admitted in evidence, such admission shall not be questioned except, as provided under Section 58 of said Act. Further, the agreement to sale itself cannot be treated as conveyance, hence stamp duty was not chargeable on it.

8. Pertinently contention that Sauda Pavti was not registered, has been dealt with while deciding the Second Appeal, holding that in view of Section 49 of the Indian Registration Act, unregistered document affecting immovable property is admissible in evidence in a suit for specific performance of contract. It is trite that in light of Section 17(2)

(v) read with Section 49 of the Indian Registration Act, 1998 document of Sauda Pavti is not compulsorily registrable.

9. Next contention advanced is that the appellate court exceeded its jurisdiction while issuing directions to respondent No.2 to sign the sale deed as a consenting party, so also, directing parties to obtain prior permission, if at all needed, for execution of sale deed from the competent authority. However, this contention also does not hold water in view of the specific provision contained under Rule 33 of Order 41 of C.P.C., which empowers the appellate court to pass any decree and make any order, which ought to have been passed or made and to make such further or other decree or order, as the case may require and this power may be exercised by the Court notwithstanding that the appeal as to part only of the decree and may be exercised in favour of or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection. The elaboration of the powers of the appellate court under Rule 33 connotes that the appellate court is sufficiently empowered to pass such orders, which are necessary for giving effect to the decree.

10. In that view of the matter, no error apparent on the face of record or any other ground is made out so as to exercise the powers of review. Review application sans merit, hence, dismissed. Civil application, if any, stands disposed of.

[S.G. CHAPALGAONKAR, J]

grt/-