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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO.300 OF 2023
IN
WRIT PETITION NO. 11239 OF 2022

Shivaji Devram Mhaske

APPLICANT

VERSUS

Bhimrao Vitthyal Mhaske and Others

RESPONDENTS

.....
Mr. Amol K. Gawali, Advocate for the Applicant
Mrs. M. A. Kulkarni, Advocate for Respondents No.1 to 6
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th JUNE, 2025

ORDER :

1. By this Review Application, the Applicant - Original Petitioner, seeks review of the direction given by this Court in order dated 20th September, 2023 passed in Writ Petition No. 11239 of 2022, thereby directing to record separate evidence in two suits.

2. By the said order, the Writ Petition was allowed and Regular Civil Suit No. 591 of 2019 and Regular Civil Suit No. 203 of 2018 were clubbed together, however, in clause "V", of the operative order, a direction was given to record separate evidence in both the suits and both the suits were directed to be decided simultaneously.

3. Learned Advocate for the Applicant submits that though the Petition is allowed by this Court, accepting the contentions of the Applicant, however, by giving direction to record evidence separately in both the suits, the main object of filing the petition is frustrated. He submits that, in view of the observations made by this Court in the order under review, the direction in clause “V” ought not to have been given.

4. Learned Advocate for the Respondents strenuously oppose the application stating that no prejudice would be caused to the Applicant by the said direction. She submits that the parties are different in both the suits and, therefore, it is necessary to record separate evidence in both the suits. She submits that no case for review is made out by the Applicant and hence, the Review Application may be dismissed with costs.

5. While allowing the Writ Petition, it is observed that, the suit property is the same and in both the suits partition is claimed. Though it is a fact that in earlier suit, State Government is a party and the order passed by the Collector is also challenged, that by itself does not mean that the suits cannot be clubbed together. Both the suits are pending in the same court and, therefore, considering the pleadings of the parties and so as to avoid different decisions, it was found desirable in the interest of

justice to club both the suit together. Accordingly, the Writ Petition is allowed.

6. Learned Advocate for the Applicant is right in contending that, if separate evidence is directed to be recorded, serious prejudice would be caused to the Applicant as the parties will be entitled to fill up lacunas brought on record in the cross-examination of witnesses of other side. It appears that if the said direction is allowed to continue, the purpose of filing the Writ Petition will be frustrated.

7. For the aforesaid reasons, the direction given in clause "V" of the operative order is reviewed and the same is deleted from order dated 20th September, 2023. Review Application is allowed.

8. Needless to mention that, the parties will be at liberty to raise legal objections at the time of recording of the evidence.

[NITIN B. SURYAWANSHI]
JUDGE