



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

**REVIEW APPLICATION (CIVIL) NO. 55 OF 2025
IN
FIRST APPEAL NO. 2305 OF 2016
AND
REVIEW APPLICATION (CIVIL) No. 56 OF 2025
IN
FIRST APPEAL NO. 2304 OF 2016**

**UTTAM SAKHARAM SULAKHE DIED LRS CHANDRAKALA AND
OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Mr. Pravin V. Mandlik, Sr. Advocate i/b Mr. Pratap P. Mandlik, Advocate
for Applicants.
Mr. S. J. Salagare, AGP for Respondent/State
Mr. V. P. Sawant, Advocate for Respondent No.6.
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CORAM : NITIN B. SURYAWANSHI J.

DATED : 13th JUNE 2025

COMMON ORDER:-

1. This is an application filed for review by the appellants/
claimants (original party No.2) of the order dated 22nd August 2024,
passed by this Court, thereby disposing of the First Appeal Nos. 2304
of 2016 and 2305 of 2016.

2. Heard learned Senior Advocate Shri. P. V. Mandlik appearing on
behalf of the applicants and learned Advocate Shri. V.P. Sawant,
appearing on behalf of respondent No.6. Though respondent Nos. 1
to 5 are served, none appears for them.

3. Learned Senior Advocate for the applicants contends that, while deciding the First Appeals, this Court has noted that, the suit filed by Kamalabai Sulakhe for partition and separate possession of the ancestral property was abated on her death and no decision on the merits is, therefore, rendered in the said suit. He submits that, the said suit is restored by order dated 7th March 2019 and it will be decided on merits. He, therefore, submits that, the observations made by this Court, would come in the way of the applicant while contesting the said suit on merits. He, therefore, seeks review of the order.

4. In paragraph No.18 of the order under review, this Court has observed thus :-

“Indisputably, said suit abated on the death of Kamalabai on 22.02.2001. Hence, no decision on merits is rendered in the said suit”

By order passed on 7th March 2019 in Civil Misc. Application No. 92 of 2006, the learned trial Court has restored Regular Civil Suit No. 308 of 2000. Certified copy of the said order is placed on record by the learned Senior Advocate.

5. Admittedly, this order was not available at the time of decision of First Appeals and, therefore, it is observed in paragraph No.18 that no decision on the merits is rendered in the said suit. Thereafter, in

paragraph No. 19 onwards, observations on merits of the claim of the parties are made. In paragraph No. 22 it is held that, party No.2 has failed to prove the factum of adoption by leading evidence and, therefore, has failed to discharge burden on him. In paragraph No.23, it is observed that, inquiry under Section 30 of the Land Acquisition Act is a summary proceeding, however, Reference Court had given opportunity to both the parties to lead their respective evidence.

6. In view of restoration of Regular Civil Suit No. 308 of 2000, it is made clear that, the observations made by this Court while deciding the First Appeals, shall not come in the way of the parties while contesting the said suit on merits. The learned trial Judge shall not be influenced by the observations made in the decision of the First Appeals and shall decide the said suit strictly in accordance with law and on its own merits. With these observations, Review Application is disposed of.

**(NITIN B. SURYAWANSHI)
JUDGE**