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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4304 OF 2009

Uttaradi Math

.. Petitioner

Versus

Bheemcharaya Balacharya
Varkhedkar & Ors.

.. Respondents

Mr. Ajey A. Joshi for petitioner.

Mr. Shrirang Katneshwarkar a/w Vivek Chauhan a/w Sandeep
Gupta for respondent nos.1 and 2.

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CORAM: ALOK ARADHE, CJ.

DATE: 14th JULY, 2025

ORAL ORDER:

1. In this writ petition filed under Article 227 of the Constitution of India, the petitioner/defendant no.2 seeks to quash and set aside the order dated 31st March, 2008 by which the Trial Court, in review petition, has framed the issues. The petitioner also seeks to quash and set aside the order dated 7th January, 2009 passed by the Trial Court by which the Trial Court has allowed the application for issuing witness summons in review proceeding.

2. Facts giving rise to filing of this writ petition, in nutshell, are that a Civil Suit, namely, Regular Civil Suit No. 91 of 1997 was filed by the respondent nos.1 and 2/plaintiffs before the Civil Judge, Senior Division, Pandharpur seeking relief of

perpetual injunction restraining the defendant no.2 from alienating the suit property and restraining the defendant no.1 from mutating his name in the record of rights. The respondents/plaintiffs led evidence in the aforesaid Civil Suit, as a result of which the Trial Court vide judgment and decree dated 31st October, 2001 dismissed the suit on merits.

3. On 18th January, 2002, the respondents/plaintiffs filed an application seeking review, namely, Review Application No. 1 of 2002. The respondents/plaintiffs also filed an application for framing issues and an application seeking witness summons. The Trial Court vide impugned order dated 31st March, 2008 allowed the application for framing issues in the review proceeding. The Trial Court by impugned order dated 3rd September, 2008 directed for issuance of witness summons in the review proceeding. Hence, this writ petition.

4. I have heard the learned counsel for the parties at length and have perused the record.

5. Review Application has to succeed on the strength of its own case and has to plead and prove the grounds mentioned under Order XLVII Rule 1 of the Civil Procedure Code, 1908. In the instance case, the respondents/plaintiffs sought for issuance of witness summons in order to prove the case in the plaint. The plaintiffs failed to adduce any evidence in the civil suit and, therefore, cannot seek production of evidence in the review proceeding and to prove its case in the suit. The impugned order dated 7th January, 2009 suffers from jurisdictional infirmity as well as error apparent on the face of the record. The order dated 3rd September, 2008, framing issues, has been passed only to facilitate the trial court to

decide the review proceeding. Therefore, no interference with the same is called for.

6. For the aforementioned reasons, order dated 7th January, 2009 is quashed and set aside and the trial court is directed to decide the review application expeditiously.

7. The writ petition is disposed of accordingly.

8. Let a copy of this order be communicated to the trial court.

(CHIEF JUSTICE)