
(2022) 01 GAU CK 0029
In the Gauhati High Court
Case No : Review Petition No. 91 Of 2019

Abdul Wahed And Anr

APPELLANT

Vs

Gulbanu Bewa And 8 Ors

RESPONDENT

Date of Decision : 05-01-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 113, 114, 115, Order 47 Rule 1

Citation : (2022) 01 GAU CK 0029

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : R Choudhury

Final Decision : Dismissed

Judgement

1. Heard Mrs. R. Choudhury, learned counsel for the petitioners as well as Mr. A.R. Sikdar, learned counsel for the respondent and Mr. S.S. Roy,

learned Govt. advocate appearing for respondent nos. 6 to 8.

2. By this review petition filed under Order 47 Rule 1 read with Section 114 CPC, the petitioners are seeking review of order dated 20.08.2018 passed

in CRP(I/O) 7/2017.

3. By the said order, this court declined to interfere with the order of injunction passed by the learned trial Court which was not interfered with in

appeal before the learned first appellate Court. While disposing of the said CRP(I/O) 7/2017, this Court took note of the fact that the first appellate

Court had arrived at a prima facie finding that the defendant no.1 in the suit had sold out land in excess of his share for which challenge in the suit has

been made. It appears that the Court also took note of the fact that the opinion of the learned trial court was to the effect that the suit land was the

joint property of the parties arrayed as respondent nos.1 to 3 as well as the petitioner no. 1 in the connected revision petition by holding that the family settlement as claimed by the petitioner no. 1 was a matter which was required to be proved in evidence.

4. The learned counsel for the review petitioners has submitted that the petitioners had purchased the suit property described in schedule-F of the plaint was purchased from the defendant no.1 in the suit and that the respondent nos. 1 to 3 had sworn an affidavit on 08.01.2014, giving their no objection to the defendant no.1 to sell the plot of land measuring 16.25 lechas land out of the total land measuring 3 katha 5 lecha and pursuant to the said affidavit, the sale deed was executed on 22.01.2014. It is submitted that for almost eight years, the petitioners have been deprived of enjoyment of their purchased land and that the incomplete construction over the suit land is now wasting away and the material stacked for further construction are all rotting in the open. Accordingly, it is submitted that the petitioner would suffer irreparable loss and injury if they are further deprived of enjoyment of their purchased land.

5. Having heard the learned counsel for both sides, the Court is of the considered opinion that relief in the connected revision was refused on the ground morefully stated in the said order dated 20.08.2018, which, in concise is to the effect that by referring to the various authorities mentioned in the said order, this Court took a view that it was not open for the revisional Court to correct each and every error committed by the learned court below and it was held that the revisional Court would not be justified in interfering with the exercise of discretion exercised by both the learned courts below and it could only be exercised in case of serious dereliction of duties and fragrant violation of fundamental principles of law and justice.

6. It is yet to be proved that the defendant no.1 being the vendor was the sole owner of the land described in schedule-F of the suit. Therefore, the impugned decision of the Court is not found to suffer from any mistake or error apparent on the face of record warranting review.

7. In the quest for appreciating the jurisdiction of court while entertaining a review application, this court has come across the following cases on the power of review:-

i. Raja Prithi Chand Vs Sukhrail, AIR 1941 FC 1.

- ii. Patel Narshi Thakershi Vs Pradyumansinghji Arjun-singhji, (1971) 3 SCC 844.
- iii. M/s Northern India Caterers (India) Vs Lt. Governor of Delhi, AIR 1980 SC 674.
- iv. Col. Avtar Singh Sekhon Vs Union of India & Ors., AIR 1980 SC 2041.
- v. S. Nagaraj & Ors Vs. State of Karnataka & Ors., 1993 Supp (4) SCC 595
- vi. Meera Bhanja Vs. Nirmala Kumari, (1995) 1 SCC 170.
- vii. Surjit Singh & Ors Vs. Union of India & Ors., (1997) 10 SCC 592.
- viii. Lily Thomas & Ors Vs. Union of India & Ors., (2000) 6 SCC 224.
- ix. Surendra Kumar Vakil Vs. Chief Executive Officer, MP., AIR 2004 SC 3088.
- x. Board of Control for Cricket, India & Anr Vs. Netaji Cricket Club & Ors., AIR 2005 SC 592.
- xi. Inderchand Jain (Dead) through LRS Vs. Motilal (dead) through LRS., (2009) 14 SCC 663.
- xii. State Vs. Atul Chandra Das, (1995) 1 GLR 246.
- xiii. Ranjit Biswas Vs. Pabitra Narayan Choudhury, 1996 (2) GLT 92.
- xiv. Lalma-Isawn Vs. State of Manipur: 2000 (3) GLT 437.

8. Observations made in these cases:

- a. In the case of Raja Prithi Chand Vs Sukhrai (supra) it was held that the Federal Court will not sit as a Court of appeal from its own decisions, nor will it entertain applications to review for rehearing and also that an order once made is final. Nevertheless, in exceptional circumstances, an application for review can be entertained. The indulgence by way of review is granted mainly owing to the natural desire to prevent irremediable injustice being done by a court of last resort as whereby some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.
- b. In the case of Patel Narshi Thakershi (supra) it was held by the Honâ??ble Supreme Court that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review

petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error.

c. In the case of M/s Northern India Caterers (India) (supra) it was held by the Honâ??ble Supreme Court that a party is not entitled to seek a

review of a judgment delivered by the Supreme Court merely for the purpose of a re-hearing and a fresh decision of the case. The normal principle is

that a judgment pronounced by the Court is final and departure from the principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

d. In the case of Col. Avtar Singh Sekhon (supra) it was held by the Honâ??ble Supreme Court that review is not a routine procedure but an

application for review could be entertained when there is material error manifest on the face of the earlier order resulting in miscarriage of justice.

e. In the case of S. Nagaraj & Ors (supra), it was held by the Full Bench of Honâ??ble Supreme Court that rectification of an order thus stems from

the fundamental principles that justice is above all and it was also held that power for rectification/ review is exercised to remove the error and not for disturbing finality.

f. In the case of Meera Bhanja Vs. Nirmala Kumari, (1995) 1 SCC 170, it was held by the Honâ??ble Supreme Court that the aforesaid approach of

the Division Bench dealing with the review proceedings clearly shows that it has overstepped its jurisdiction under Order XLVII Rule 1 CPC by

merely styling the reasoning adopted by the earlier Division Bench as suffering from a patent error. It would not become a patent error or error

apparent in view of the settled legal position indicated by us earlier. In substance, the Review Bench has re-appreciated the entire evidence, sat almost

as court of appeal and has reversed the findings reached by the earlier Division Bench. It was observed that even if the earlier Division Bench's

findings regarding C.S. Plot No. 74 were found to be erroneous, it would be no ground for reviewing the same, as that would be the function of an

appellate court. Learned counsel for the respondent was not in a position to point out how the reasoning adopted and conclusion reached by the

Review Bench can be supported within the narrow and limited scope of Order

XLII Rule 1 CPC. Right or wrong, the earlier Division Bench judgment had become final so far as the High Court was concerned. It could not have been reviewed by reconsidering the entire evidence with a view to finding out the alleged apparent error for justifying the invocation of review powers. Only on that short ground, therefore, the appeal before the Honâ??ble Supreme Court was allowed.

g. In the case of Lily Thomas & Ors (supra), it was held by the Honâ??ble Supreme Court that the power of review is not an inherent power. It must be conferred by law. A review is also not an appeal in disguise. It cannot be denied that the justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetuation shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error. It was further held that the dictionary meaning of the word ""review"" is ""the act of looking, offer something again with a view to correction or improvement"". It cannot be denied that the review is the creation of a statute.

h. In the case of Surendra Kumar Vakil and Ors. (supra) it was observed by the Honâ??ble Supreme Court that it is not disputed at the Bar that the judgment in question was very much available before the Court when the appeal was argued and the judgment of Nagpur High Court was specifically referred to in the Note of written submissions made on behalf of respondent in the appeal and it was held that a point that has been heard and decided cannot form a ground for review even if assuming that the view taken in the judgment under review is erroneous.

i. In the case of Board of Control for Cricket, India & Anr. (supra) it was held by the Honâ??ble Supreme Court that application for review of the order on account of misconception of law and fact while passing the order is maintainable. In other words, judgment and order could be reviewed for misconception of law and fact by the Court while passing the order sought to be reviewed. Para 88, 89 and 90 is quoted below:

88. We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in

law, Section 114 of the Code empowers a Court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the Court except those which are expressly provided in S.114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

89. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the Court which would include a mistake in the nature of the undertaking may also call for a review of the order.

An application for review would also be maintainable if there exists sufficient reason therefore. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in O.47, R.1 of the Code is wide enough to include a misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit*."

j. In the case of *Surjit Singh & Ors* (supra) it was held by the Honâ??ble Supreme Court that when a patent error is brought out to the notice of the Tribunal, the Tribunal is duty bound to correct with grace its mistake of law by way of review of its order or/directions.

k. In the case of *Inderchand Jain* (supra) it was held by the Honâ??ble Supreme Court that Section 114 of the Code of Civil Procedure provides for a substantive power of review by a civil Court and consequently by the appellate Courts. The words "*subject as aforesaid*" occurring in Section 114 of the Code mean subject to such conditions and limitations as may be prescribed as appearing in Section 113 thereof and for the said purpose, the procedural conditions contained in Order 47 of the Code must be taken into consideration. Section 114 of the Code although does not prescribe any limitation on the power of the Court but such limitations have been provided for in Order 47 of the Code.

l. In the case of *State of Assam & Ors.* (supra) this Court had held that in case a review is by no means an appeal in disguise whereby a judgment is

reheard and corrected. The scope of review was held to be very restricted. It was held that a judgment can be reviewed only if the applicant can

establish that - (1) discovery of new and important evidence/matter which could not be produced at the time of hearing (2) error apparent on the face

of the record and (3) for any other sufficient reason. It was further held that in appropriate case, court can exercise the power of review, but in a very

restricted and limited manner and that the spirit of Order XVII CPC has to be followed as guideline to review a judgment/order passed by the High

Court in its writ jurisdiction.

m. In the case of Ranjit Biswas (supra) this Court had held that the expression ""any other sufficient reasons"" mentioned in Order XLVII Rule 1 CPC

also extends to the grounds or/reasons on which the court can entertain review petition for doing substantial justice.

n. In the case of Lalma-Isawn (supra) this court had interpreted that the expression ""any other sufficient reasons"" mentioned in Order XLVII Rule 1,

CPC and held that it included the reasons on which application for review could be entertained for doing substantial justice.

9. It is also well settled that a review cannot be treated as an appeal in disguise to correct all and every error of facts. Moreover, this court is also

required to remain cautious that power of revision under Section 115 CPC itself has its limitations and it cannot be exercised like appellate power as if

the revisional court was also a court of facts.

10. Under such circumstances, in light of what has been already mentioned in the impugned order dated 20.08.2018 passed in CRP(I/O) 7/2017, no

grounds for review of the said order has been made out. Accordingly, this review petition is failed and the same is dismissed.

11. Noting expressed in this order will constitute opinion of this Court on merit of the respective case of the parties.