
(2021) 07 TEL CK 0007
In the Telangana High Court
Case No : Civil Revision Petition No. 5358 Of 2017

C. Rajendar	Vs	APPELLANT
B. Jagan		RESPONDENT

Date of Decision : 22-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Civil Procedure, 1908 — Section 114, 151, Order 47 Rule 1

Citation : (2021) 07 TEL CK 0007

Hon'ble Judges : B. Vijaysen Reddy, J

Bench : Single Bench

Advocate : Mahmood Ali, S A K Mynuddin

Final Decision : Dismissed

Judgement

1. This revision petition arises out of order dated 09.08.2017 in I.A. No.513 of 2017 in O.S. No.146 of 2011 passed by the XXV Additional Chief

Judge, City Small Causes Court whereunder application filed by the Petitioner/Plaintiff to review the judgment in O.S.No.146 of 2011 dated

06.02.2017 has been dismissed.

2. The Petitioner/Plaintiff instituted suit in O.S. No.146 of 2011 for specific performance of agreement of sale-cum-GPA and to declare document

bearing No.6833 of 2006 dated 12.12.2006 registered as Deed of Cancellation of Agreement of Sale-cum-GPA as not binding on the

Petitioner/Plaintiff; to declare registered sale deed bearing document No.5186 of 2007 dated 21.09.2007 executed in favour of defendant Nos.2 and 3

as null and void as not binding on Petitioner/Plaintiff; to direct the defendants to deliver vacant and physical possession of suit scheduled property and

for incidental reliefs.

3. The suit was dismissed by judgment dated 09.08.2017. The Petitioner filed application in I.A.No.513 of 2017 to review the said judgment under Order 47 Rule 1 read with Section 151 CPC.

4. The grounds of review can be summarized as under:

(i) Ex.A1 is a registered Sale-cum-GPA coupled with Interest.

(ii) The defendant having received full sale consideration ceased to be the owner and has no power to unilaterally cancel Ex.A1. (iii)The trial court

erred in holding Ex.A1 is a nominal document and no sale consideration is paid, such finding goes against the recitals of Ex.A1.

(iv) The Court committed serious error in believing testimony of D.W.1 who did not dispute execution of Ex.A1. The recitals of Ex.A1 bind the

executant, as such findings of the trial Court are against law and constitute error apparent on the face of record.

(v) The property purchased under Ex.A1 by the Petitioner/Plaintiff and the Property purchased under Ex.A6 under by the defendant Nos.2 and 3 are

different and Court ought not to have dismissed the suit.

(vi)The so-called cheque under Ex.D3 issued in favor of D.W.4 has no relationship whatsoever with the suit transaction and such inquiry and

irrelevant finding constitute error apparent on the face of record.

(vii)The trial court ignored decision in I.A.No.2000 of 2006 in O.S.No.6348 of 2006 and subsequent withdrawal of suit by the defendant No.1

constitutes res judicata as such suit ought to have been decreed.

5. The review application was dismissed by order dated 9. 07.2017 by the trial Court by holding that no new or important matter of

evidence was produced by the review petitioner; review can be sought only on the pre-text of any mistake or error apparent on the face of record

within limited scope of review power, the court is called upon to examine the material on record vis-à-vis the impugned judgment after appreciation

of evidence; Ex.A1 was held to be unenforceable. The Court cannot reassess the evidence which was already appreciated under the judgment in one

way or the other. Further, referring to judgment of Supreme Court in SURAJ LAMP INDUSTRIES v. STATE OF HARYANA [(2009) 7 SCC 363]

the court concluded that it cannot substitute the view taken by the predecessor Judge in the judgment under review and no grounds are made out to

review the judgment.

6. In this revision, same grounds urged in the review application have been taken.

7. Heard Mr. Mohd. Vequar Hussain for Mr. Mahmood Ali, learned counsel for the Petitioner; Mr. D. Khasim Saheb, learned counsel for the

respondent Nos.1 and 5 and Mr. K. Shankar Rao, learned counsel for the respondent Nos.2 and 3.

8. The learned counsel for the Petitioner/Plaintiff submitted that the respondent Nos.2 and 3 are subsequent purchasers. The respondent Nos.4 and 5

are family members of the respondent No.1 and are attesting witnesses to the suit agreement under Ex.A1 which is a registered document. There

was no question of unilaterally cancelling Ex.A1 Agreement-cum-GPA which is a contract of sale coupled with interest. The learned counsel relied on

the following judgments to buttress his contention that the order of the trial Court ought to have been reviewed and the conditions laid down under

Order 47 Rule 1 CPC have been satisfied:

SETH LOON KARNA SETHIYA v. IVAN E. JOHN AIR 1969 SC 73; SMT. TARA DEVI v. SMT. SUDESH CHAUDHARY 1997 SCC Online

Raj 79; RITA WANGDI v. LODEN TSHERING BHUTIA 2005 SCC Online Sikk 1; SHANIT BUDHIYA VESTA PATEL v. NIRMALA

JAYPRAKASH TIWARI (2010) 5 SCC 104; U. MANJUNATH RAO v. U. CHANDRASHEKAR (2017) 15 SCC 309 and M. MANIKANDAN

v. THE SUB-REGISTRAR, THAMARAIPATTI 2017 SCC OnLine Mad 5499

9. Per contra learned counsel for the respondent Nos.2 and 3 submitted that Ex.A1 is not supported by any consideration; there is no evidence that

Petitioner/Plaintiff has paid Rs.30 lakhs towards sale consideration. The cheque for 3 lakhs under Ex.A6 bounced. The review court has got limited

jurisdiction. The grounds of review urged by the Petitioner/Plaintiff do not fit into any of the criteria enumerated under Order 47 Rule 1 CPC. In the

guise of review, the Petitioner/Plaintiff seeks to argue the case on merits and impeach the judgment of the trial court by reassessing evidence which is

impermissible. Further, the revision is totally devoid of merits. The grounds urged in the revision is nothing but repetition of grounds urged in review

petition; nothing is stated as to how order of lower court suffers from error of law or jurisdiction so as to exercise revisional jurisdiction by this Court.

The learned counsel for the respondent Nos.1 and 5 adopted the arguments of the learned counsel for the respondent Nos.2 and 3.

10. Having giving earnest consideration to the submissions of the counsel appearing for the respective parties, this Court is of the view that there are

no merits in this revision petition. Review is not an appeal in disguise. Review Court has limited jurisdiction. The grounds on which review can be

sought are enumerated under Order 47 Rule 1 CPC which is extracted below:

1. Application for review of judgment:- (1) Any person considering himself aggrieved â?

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the

exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on

account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree

passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other

party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the

Appellate Court the case on which he applies for the review.

Explanation :- The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the

subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

11. It is clear from the above provision that review can be sought for only when there is error apparent on the face of the record, decree was passed

on account of some mistake etc. Going by the grounds urged in the review application, it cannot be said that conditions prescribed under Order 47

Rule 1 are satisfied by the Petitioner/Plaintiff. There is a judgment passed by trial Court on merits. It was held by the trial Court that Ex.A1 is

unenforceable. The Court having appreciated oral and documentary evidence came to such conclusion. It is not for the review court to examine as to whether such finding on facts and evidence are correct or not. In doing so, the review court is not expected to reassess the evidence as otherwise it would amount to review court substituting itself as a court of appeal which is impermissible under law.

12. This Court has gone through the judgments cited by the learned counsel for the petitioner. The principle of law enunciated from time to time as to the parameters for the Court to entertain a review application have been reiterated in the aforesaid judgments under different fact situations. This Court is not convinced with the submission of the learned counsel for the petitioner on the basis of the above judgments. It would be relevant to refer to a recent decision in *RAM SAHU v. VINOD KUMAR RAWAT* 2002 SCC Online SC 896 wherein after elaborately discussing the review jurisdiction of the High Court under Article 226 of the Constitution of India and Section 114 read with Order 47 Rule 1 CPC and by relying on its earlier decisions, the Supreme Court observed as under:

“27. In the case of *Lily Thomas v. Union of India*, (2000) 6 SC 224, it is observed and held that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power.

30. 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. In the case of *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji*, (1971) 3 SCC 844, this Court has held 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.

33. In the case of *State of West Bengal v. Kamal Sengupta*, (2008) 8 SCC 612, this Court had an occasion to consider what can be said to be “mistake or error apparent on the face of record”. In para 22 to 35 it is observed and held as under:

“22. The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts

or the legal position. If an error is not self-evident and detection

thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47

Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in

law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the

power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.

34. To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a

substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed

but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the

case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power

of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section

imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the

prescribed grounds mentioned in Order 47 Rule 1 CPC, which has been elaborately discussed hereinabove. An application for review is more

restricted than that of an appeal and the Court of review has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1 CPC itself. The

powers of review cannot be exercised as an inherent power nor can an appellate power can be exercised in the guise of power of review.â??

13. It is brought to the notice of this court that appeal in A.S.No.22 of 2017 is filed by the petitioner/plaintiff challenging the judgment of the lower

court and is pending before this court. It is argued by learned counsel for the petitioner that review petition is maintainable notwithstanding appeal

being filed challenging the judgment under review. As this Court has decided the CRP on merits, the issue of maintainability of the review petition is

not necessary to be dealt with separately.

14. As pointed out in the preceding paragraphs the grounds of review raised by

the petitioner do not fit into any of the conditions prescribed under order 47 Rule 1 CPC. A review cannot be expected to conduct a detailed and roving enquiry into the reasons and assessment of evidence in the judgment under review (see para 14 (internal para 33) of the decision in RAM SAHU (7 supra). Further, this Court exercising revision jurisdiction does not find any illegality or perversity in the order impugned herein. There are no merits in this revision petition.

15. Accordingly, the civil revision petition is dismissed. Pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.