(2022) 11 CHH CK 0037

In the Chhattisgarh High Court

Case No : Writ Petition (227) No. 2723 Of 2010

Jeevan APPELLANT

Vs

Jainbai (Died) RESPONDENT

Date of Decision : 10-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Code Of Civil Procedure, 1908 — Section 114, 151, Order 47 Rule 1
Chhattisgarh Land Revenue Code, 1959 — Section 47, 51, 51(2), 52(2), 165(6), 170, 170B
Limitation Act, 1963 — Section 5
Prohibition of Benami Transaction Act, 1988 — Section 3
Evidence Act, 1872 — Section 91

Citation : (2022) 11 CHH CK 0037

Hon'ble Judges : Narendra Kumar Vyas, J

Bench : Single Bench

Advocate : Parag Kotecha, Aman Sharma, Shubham Verma, Ravindra Agrawal

Final Decision : Allowed

Judgement

1. The petitioner has filed the instant writ petition under Article 227 of the Constitution of India challenging order dated 09.10.2009 (Annexure P/10) passed by the Board of Revenue reviewing its earlier order dated 22.07.2008 (Annexure P/5) passed in Revenue Case No. 02/A-23/2002-03 (Smt. Jainbai Vs. Smt. Sukhantinbai & 14 others) wherein the said review application has been allowed quashing the earlier order dated 22.07.2008 & and set aside the order passed by the Collector, Kanker on 07.08.2000.

2. The brief facts as reflected from records are that husband of petitioner No. 5 was original owner of the agriculture land situated at Khasra No. 464/1 area 7.12 acres and out of that from Khasra No. 64/01 Gha area 0.15 decimal, 464/01 Da area 0.10, Khasra No. 464/01 Ch area 0.30 total 0.60 decimal land had been purchased by the Vyas Prasad Sharma in the name of Jain Bai. It has been contended that the said transaction was committed on fraud, therefore, the

petitioner has challenged the said transaction on account of violation of Section 170 of the Land Revenue Code, 1959 (for short "the Code, 1959"). The Sub-Divisional Officer, Kanker vide order dated 13.12.1988 (Annexure P/1) in Revenue Case No. 1/A-23/88-89 (Smt. Rajbati Vs. Vyas Prasad Sharma & others) has allowed the application and set aside the transfer of the land, further directing to return-back the land to husband of applicant Rajbati. Against which Jain Bai has filed appeal before the Additional Collector, Kanker, who vide order dated 12.06.1990 (Annexure P/2) in Revenue Appeal Case No. 2/A-23/88-89 has set aside the order passed by the Sub-Divisional Officer as the land does not fall within the ambit of Section 170 (B) of the Code, 1959. Against that Jain Bai has preferred a revision before the Board of Revenue which is registered as Revenue Case No. 123-Five/90 & 147-Five/90. Both Jain Bai and Rajbati have preferred revision before the Board of Revenue. The Board of Revenue vide order dated 02.06.1992 (Annexure P/3) has remanded the matter for enquiry and further proceeding to the Additional Collector, Kanker.

3. The Additional Collector vide order dated 07.08.2000 (Annexure P/4) in Revision No. 2/A-23/97-98 has held that the transaction between tribal to tribal is Benami transaction. There was clearly oral and documentary evidence that non-tribals are in possession of the land, therefore, the land was directed to be reverted back to the original tribal and if the original tribal has expired then the land shall be allotted to their legal heirs. Learned Additional Collector has also directed the Sub-Divisional Officer to give possession to the original tribal within 15 days from the date of receipt copy of the order and also directed to submit compliance report. Against that Jain Bai has preferred Revision before the Board of Revenue who vide order dated 22.07.2008 (Annexure P/5) has rejected the revision. Learned Board of Revenue while dismissing the revision has recorded its finding that the applicants are unable to establish that the transaction was held between tribal to tribal, therefore, adverse inference was drawn in favour of respondents No. 1 to 7. The Board of Revenue has also recorded its finding that the Collector, Kanker has recorded its finding on the basis of direction given by the Board of Revenue on 02.06.1992, therefore, no ground for interference is made out and accordingly, rejected the revision petition.

4. Thereafter, respondent No. 1/Jain Bai has filed application for reviewing the order dated 22.07.2008 under Section 51 of the Code, 1959 mainly contending that the Board of Revenue has not taken into consideration whether possession is proved from documentary evidence adduced by the parties with regard to possession of land by the tribal and since transaction is done between tribal to tribal, therefore, provisions of Section 165(6) & 170 (B) of the Code, 1959 are not extracted. Learned Board of Revenue has also not given any specific finding that the land is situated at urban area, therefore, the provisions of Sections 165(6) & 170 (B) of the Code, 1959 are not attracted as it is confined to agricultural land only. It has also been contended that since registration of the property was done between tribal to tribal in the year 1981-82, therefore, provisions of Section 170(B) of the Code, 1959 were not attracted. Respondent

No. 1 has also filed the application for stay of the order under Section 52(2) of the Code, 1959 and has prayed for review of the order.

5. The Board of Revenue vide order dated 14.05.2009 has stayed the further proceedings and issued notice to the petitioner. In pursuance of the notice issued to the petitioner by the Board of Revenue, the petitioner has raised objection about maintainability of the review application mainly contending that the review application has been filed after 10 months delay though respondent No. 1 and her counsel have appeared before the Board of Revenue on every date of hearing i.e. from 18.03.2008 to 31.03.2008 and put their signature, therefore, the contention that they are not aware about the date of hearing, cannot be considered. It has also been contended that the application filed by them under Section 5 of Limitation Act and Section 47 of the Code, 1959 are not supported by an affidavit, therefore, the application for condonation of delay and the review application deserve to be rejected. It has also been contended that the grounds which have been raised by the applicants is not legal issue on which, the review application is maintainable, therefore, the revenue application deserves to be rejected. The Board of Revenue vide impugned order dated 09.10.2009 (Annexure P/10) has allowed the review application by recorded its finding that purchaser Jain Bai and seller Phool Singh both belong to Schedule Category, therefore, the transaction between them is bonafide transaction and also set aside the order dated 07.08.2000 passed by the Collector, Kanker.

6. Learned counsel for the petitioners would submit that Board of Revenue without assigning any reason for review and without considering the scope/ provisions/permissible grounds of review as provided under Order 47 Rule 1 of the C.P.C. which are attracted or not looking to the present facts and circumstances of the case, has allowed the review application which is illegality. It has also been contended that the Board of Revenue without considering the facts that review was filed belatedly and no proper explanation for condonation of delay, has been filed, therefore, prayed for quashing of the order passed by the Board of Revenue on 09.10.2009 (Annexure P/10). In support of his contention, he placed reliance upon the judgment rendered by Hon'ble the Supreme Court in Bhaiji Vs. Sub Divisional Officer Thandla (2003) 1 SCC 692, Radhiya Bai Vs. State of Chhattisgarh & others Review Petition No. 53 of 2009 (Decided on 10.07.2009), A. Sriniwas Rao & others Vs. Union of India & others 2007 LAB I.C. 367 & Ram Sahu (Dead) Through Lrs. Vs. Vinod Kumar Rawat AIRONLINE 2020 SC 813.

7. On the other hand, learned counsel for respondent No. 1 reiterated the factual matrix and would submit that the alleged transaction has been taken place in between the persons of aboriginal tribes and the provisions contained in the Prohibition of Benami Transaction Act, 1988 have been ignored while passing the order challenged in review specially Section 3 of the Benami Transaction Act, 1988 which prohibits such plea, hence, the review was required, therefore, the Board of Revenue has rightly passed the order. He would further submit that the

spot inspection and demarcation was conducted by the revenue official in which it was found that the purchaser, the person belonging to the aboriginal tribe was found in possession, such material evidence was ignored while passing the order, therefore, the review petition was tenable. He would further submit that as per Section 170B of the Code, 1959 every person who on the date of commencement of the M.P. Land Revenue Code (Amendment) Act, 1980, is in possession of which belongs to a member of tribe which has been declared to be an aboriginal tribe between the period commencing on 22nd October, 1959 and ending on the date of commencement of Amendment Act, 1980 shall within two years of such commencement, notify to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land and thereafter the Sub-Divisional Officer has to conduct the enquiry as provided in Section 3 of 170B of the Code, 1959. The subject matter was not covered within the said period still Sub-Divisional Officer has passed the order which has been rightly ractified in the review. He would further submit that the provision contained under Section 91 of the Evidence Act has been violated while passing the order which prohibits the admissibility of oral evidence in place of the documentary evidence as the sale deeds were executed by aboriginal tribe in favour of another aboriginal tribe. He would further submit that the order of review dated 09.10.2009 passed by the Board of Revenue is perfectly in accordance with law. In support of his contention, he placed reliance upon the judgment rendered by Hon'ble the Supreme Court in Bate Krishna Damani (Dead) through Lrs. Vs. Kailash Chand Srivastava & another AIR 1995 SC 453, Board of Control for Cricket in India & another Vs. Netaji Cricket Club & others AIR 2005 SC 592, Dhirendra Nath Sharma Vs. State of Madhya Pradesh & another 1985 M.P.L.J. 786, Nityanand Panigrahi Vs. State of M.P. & others 2009 (5) M.P.H.T. 30 (CG) & Bedram Vs. State of Chhattisgarh & others WP No. 2738 of 2002 (Decided on 10.05.2019) and would pray for dismissal of the writ petition.

8. I have heard learned counsel for the parties and perused the documents placed on record with utmost satisfaction.

9. The issue required to be determined by this Court is whether the learned Board of Revenue was justified in reviewing its own order looking to the facts and circumstances of the case and whether the grounds which have been raised by respondent No. 1 in review application can be a ground permissible to him exercising its power of review by the Board of Revenue. For better understanding the matter, it is expedient for this Court to extract the provisions which govern the power of review by the revenue authority under the Land Revenue Code, 1959. Section 51 of the Code, 1959 provides power for review by the revenue authority. Section 51 (2) provides that no order shall be reviewed except on the grounds provided for in the Code of Civil Procedure, 1908, therefore, the grounds which have been raised by the petitioner can said to be grounds available under Order 47 Rule 1 of the C.P.C. or not. Section 114, Order 47 Rule 1 of C.P.C. & Section 51 of the Code, 1959 are extracted below:-

“Section 114 of the C.P.C.- Review. - Subject as aforesaid, any person considering himself aggrieved—

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

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

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”

“Order 47 Rule 1 of C.P.C.-

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

(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 of 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 on 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.]

“Section 51 of the Code, 1959- Review of orders:- (1) The Board and every Revenue Officer may, either on its/his own motion or on the application of any party interested review any order passed by itself/himself or by any of its/his predecessors in office and pass such order in reference thereto as it/he thinks fit :

Provided that-

(i) if the [Commissioner], Settlement Commissioner, Collector or Settlement Officer thinks it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the Board, and if an officer subordinate to a Collector or Settlement Officer proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction in writing of the authority to whom he is immediately subordinate;

(i-a) no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order;

(ii) no order from which an appeal has been made, or which is the subject of any revision proceedings shall, so long as such appeal or proceedings are pending be reviewed;

(iii) no order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings, and no application for the review of such order shall be entertained unless it is made within ninety days from the passing of the order.

(2) No order shall be reviewed except on the grounds provided for in the Code of Civil Procedure, 1908 (V of 1908).

(3) For the purposes of this section the Collector shall be deemed to be the successor in office of any Revenue Officer who has left the district or who has ceased to exercise powers as a Revenue Officer and to whom there is no successor in the district.

(4) An order which has been dealt with in appeal or on revision shall not be reviewed by any Revenue Officer subordinate to the appellate or revisional authority."

10. From bare perusal of the review petition filed before the Board of Revenue, it is quite vivid that respondent No. 1 has filed review petition pointing out the certain non-consideration of material facts contending that the land was in possession of tribal, therefore, plea of Benami transaction cannot be established. It has been contended that the Board of Revenue has not taken into consideration the provisions of Benami transaction which have separately the mechanism for declaring any transaction to be Benami transaction and in the present case, the transaction was done between tribal to tribal, therefore, it is apparent mistake which needs to be reviewed and accordingly, it has rightly been reviewed by the Board of Revenue. Respondent No. 1 has also contended that provisions of Section 165(6) and 170 of the Code, 1959 are not applicable to the present facts of the case and these are the vital facts, which have not been taken into consideration, therefore, review is very much maintainable.

11. From perusal of the provisions, it is clear that the power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was

made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits.

12. From the averments made in the application for review filed before the Board of Revenue, it is quite vivid that respondent No. 1 has not been able to point out any error which is manifest on the face of record which would have effect on doing justice between the parties. The power, scope and limitation of reviewing the order has come up for consideration before Hon'ble the Supreme Court in S. Madhusudhan Reddy Vs. V. Narayana Reddy & others Civil Appeals No. 5503-5504 of 2022 (Decided on 18.08.2022), wherein Hon'ble Bench of three judges has held at paragraph 14, 19 & 20 as under:-

"14. In Col. Avatar Singh Sekhon v. Union of India and Others Civil Appeals No. 5503-5504 of 2022 (Decided on 18.08.2022), this Court observed that a review of an earlier order cannot be done unless the court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness. The observations made are as under:

"12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In Sow Chandra Kante and Another v. Sheikh Habib 11 this Court observed :

'A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. … The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.' " (emphasis added)

19. After discussing a series of decisions on review jurisdiction in Kamlesh Verma v. Mayawati and Others 24, this Court observed that review proceedings have to be strictly confined to the scope and ambit of Order XLVII Rule 1, CPC. As long as the point sought to be raised in the review application has already been dealt with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review jurisdiction were succinctly summarized in the captioned case as below:

"20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in Chajju Ram vs. Neki, and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulose Athanasius & Ors. to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors.

20.2. When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

20. In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma15, this Court was examining an order passed by the Judicial Commissioner who was reviewing an earlier judgment that went in favour of the appellant, while deciding a review application filed by the respondents therein who took a ground that the predecessor Court had overlooked two important documents that showed that the respondents were in possession of the sites through which the appellant had sought easementary rights to access his home-stead. The said appeal was allowed by this Court with the following observations:

“3 …It is true as observed by this Court in Shivdeo Singh and Others v. State of Punjab26 there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and pulpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court." (emphasis added)"

13. Hon'ble the Supreme Court in Ram Sahu (Dead) through Lrs. & others Vs. Vinod Kumar Rawat & Others Civil Appeal No. 3601 of 2020 (Decided on 03.11.2020) has also considered the exercise of power and ambit of scope of review and held at paragraph 30, 34 & 35 as under:-

"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 vs. 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.

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.

35. Considered in the light of the aforesaid settled position, we find that the High Court has clearly overstepped the jurisdiction vested in the Court under Order 47 Rule 1 CPC. No ground as envisaged under Order 47 Rule 1 CPC has been made out for the purpose of reviewing the observations made in para 20. It is required to be noted and as evident from para 20, the High Court made observations in para 20 with respect to possession of the plaintiffs on appreciation of evidence on record more particularly the deposition of the plaintiff (PW1) and his witness PW2

and on appreciation of the evidence, the High Court found that the plaintiff is in actual possession of the said house. Therefore, when the observation with respect to the possession of the plaintiff were made on appreciation of evidence/ material on record, it cannot be said that there was an error apparent on the face of proceedings which were required to be reviewed in exercise of powers under Order 47 Rule 1 CPC. At this stage, it is required to be noted that even High Court while making observations in para 20 with respect to plaintiff in possession also took note of the fact that the defendant nos. 1 and 2 – respondents herein themselves filed an application being I.A. No.1267 of 2012 which was filed under Section 151 CPC for getting the possession of the disputed house from the appellants and the said application was dismissed as withdrawn. Therefore, the High Court took note of the fact that even according to the defendant nos. 1 & 2 the appellants were in possession of the disputed house. Therefore, in light of the fact situation, the High Court has clearly erred in deleting para 20 in exercise of powers under Order 47 Rule 1 CPC more particularly in the light of the settled preposition of law laid down by this Court in the aforesaid decisions."

14. The judgment cited by learned counsel for respondent No. 1 is not applicable to the facts and circumstances of the present case as the grounds which have been agitated by respondent No. 1 are new grounds which were never raised when the original order dated 22.07.2008 was passed and in the review application also they have raised these grounds in the submissions made before this Court, which cannot be good ground for review of the order by the Board of Revenue, therefore, the learned Board of Revenue has committed illegality in reviewing its own order, as such, the order dated 09.10.2009 (Annexure P/10) passed by the Board of Revenue deserves to be set aside and accordingly, it is set aside.

15. However, liberty is granted to respondent No. 1 who was applicant before the review proceeding, to exhaust appropriate remedy available to him under the law.

16. Consequently, the writ petition is allowed with the aforesaid liberty granted in favour of respondent No. 1.

