

(2011) 05 GUJ CK 0148
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1241 of 2010 in Special Civil Application No. 13578 of 2008

Revandas Ranchhodbhai Rathod

APPELLANT

Vs

Jyotiben and Others

RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Bombay Revenue Tribunal Act, 1957 — Section 12, 17, 9
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32(1)(B), 76, 76(2), 77
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 4(2), Order 47 Rule 8
Evidence Act, 1872 — Section 44

Citation : (2011) 3 GLH 1

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : B.G. Patel, for the Appellant; Satyam Y. Chhaya, for Respondents 1.2.3 - 2 and Government Pleader for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—The Appellant-original Petitioner seeks to challenge the judgment and order dated 03.12.2009 passed by learned Single Judge in Special Civil Application No. 13578 of 2008, whereby learned Single Judge rejected the writ petition, confirming order passed by Gujarat Revenue Tribunal dated 11.07.2006 in review.

2. Brief facts relevant for the purpose of deciding this appeal can be summarize as under:

The dispute relates to a portion of land situated at Alarsa Ta. Borsad Dist. Anand, which was running in the names of heirs of Madhusudan Ratilal Thakar and Deviprasad Ratilal Thakar. The record reveals that vide entry No. 8009 dated 19.03.1980, the name of Madhusudan Thakar was ordered to be deleted and the land in question thereafter stood in the name of Deviprasad Ratilal Thakar. The

said entry was certified on 10.08.1980. The record reveals that vide entry No. 8978 dated 24.05.1993, the name of Deviprasad Ratilal Thakar was deleted, in light of the statement of Deviprasad Ratilal Thakar that he was voluntarily relinquishing his right from the land in question. After this, the names of heirs of Madhusudan Ratilal Thakar were again mutated in the revenue record and accordingly entry was effected, which came to be certified on 07.09.1993.

3. The record reveals that in the year 1993, the Appellant-original Petitioner initiated the proceedings by way of Tenancy Case No. 802 of 1993 before the Mamlatdar and ALT, Borsad by filing application under the provision of Bombay Tenancy and Agricultural Lands Act. The record reveals that initially names of two heirs of Madhusudan Ratilal Thakar i.e. Mukesh Madhusudan Thakar and Ramesh Madhusudan Thakar were included as party - Respondents in the said proceedings and accordingly they were joined as party to the said proceedings. However, it appears that one application was submitted by the learned advocate appearing on behalf of applicant on 30.03.1998, stating that only Deviprasad Ratilal Thakar has right, title and interest in the land in question and that the heirs of Madhusudan Ratilal Thakar and/or heirs of Ratilal Thakar have no right, title and interest in the land in question and prayed for deletion of names of heirs of Madhusudan Ratilal Thakar. It appears that as a result of that, names of heirs of Madhusudan Ratilal Thakar were ordered to be deleted.

4. The Record reveals that when the application was preferred on behalf of Appellant for deletion of the names of heirs of Madhusudan Ratilal Thakar from the tenancy proceedings, the Appellant has relied upon the entry No. 8009 and suppressed the fact about the entry No. 8978 dated 24.05.1993, wherein, Deviprasad Ratilal Thakar voluntarily relinquished his right from the ancestral property. In this manner, only the name of Deviprasad Ratilal Thakar continued in the tenancy proceedings, initiated by the Appellant.

5. Surprisingly, on the very next day of deleting the names of heirs of Madhusudan Ratilal Thakar, Mamlatdar and ALT, Borsad allowed the Tenancy Case No. 802 of 1993 and declared the Appellant as tenant of the land in question and allowed the said application filed by the Appellant u/s 32(1)(B) of the Bombay Tenancy and Agricultural Lands Act.

6. It is evident that at least up to this stage, factual position was that Deviprasad Ratilal Thakar had no right or title on the ancestral property as he had already relinquished his right in favour of heirs of Madhusudan Ratilal Thakar and whose names were mutated in the record of rights.

7. In the meantime, the record reveals that heirs of Madhusudan Ratilal Thakar sold the land in question to Respondent No. 2- Gokulbhai Solanki by registered sale deed dated 09.06.1997. This factum of sale deed dated 09.06.1997 is also noted by Mamlatdar and ALT, Borsad in his order dated 31.03.1998. There is also a reference of Civil Suit filed by Respondent No. 2 against the Appellant for permanent injunction. In spite of the absence of heirs of deceased Madhusudan

Ratilal Thakar and in absence of the purchaser, Mamlatdar and ALT, Borsad by his order dated 31.03.1998, allowed the Tenancy Case No. 802 of 1993 declaring the Appellant as a tenant.

8. The record reveals that in spite of Deviprasad Ratilal Thakar relinquishing his right from the ancestral property in this regard, vide entry No. 8378 dated 24.05.1993, Deviprasad Ratilal Thakar challenged the order passed by the Mamlatdar and ALT, Borsad dated 31.03.1998 in Tenancy Case No. 802 of 1993 by way of Tenancy Appeal before the Deputy Collector and the Deputy Collector, Anand on 20.11.1998 quashed and set aside the order of Mamlatdar and ALT, Boarsad declaring Appellant herein as tenant. Interestingly, the said order passed by the Deputy Collector was not challenged till the year 2001. The Appellant instituted Civil Suit in the Court of Civil Judge (J.D.), Borsad against Deviprasad Ratilal Thakar, alleging inter-alia that the said Deviprasad Ratilal Thakar was trying to disturb the settled possession of the Appellant. In the said Civil Suit, consent terms came to be placed as settlement was arrived at between the Appellant and Deviprasad Ratilal Thakar. In the said suit, Deviprasad Ratilal Thakar gave declaration before the Civil Judge that the Appellant is tenant of the land in question and he would not disturb the possession of the Appellant. On the basis of said consent pursis dated 01.05.2001, learned Civil Judge (J.D.), Borsad passed consent decree on 01.05.2001.

9. No sooner the Appellant got the consent decree in his hands, he challenged the order dated 20.11.1998 passed by Deputy Collector, Anand by filing Revision Application No. 516/1998 before the Revenue Tribunal.

10. The Tribunal was thoroughly misled by the Appellant by showing consent decree drawn by the Civil Court and on the strength of the consent decree, order passed by Deputy Collector, Anand was quashed and thereby, once again getting of the order of the Mamlatdar and ALT, restored.

11. Having learnt about the fraud in collusion with Deviprasad Ratilal Thakar, the heirs of Madhusudan Ratilal Thakar preferred Review Application No. 14 of 2002 before the Gujarat Revenue Tribunal and pointed out the manner in which the Civil Suit was filed and consent decree was obtained.

12. Gujarat Revenue Tribunal, having noticed that fraud has been systematically played upon thought fit to quash and set aside its earlier order dated 27.08.2001 passed in Revision Application No. 516 of 1998. With this order passed by the Tribunal in Review Application No. 14 of 2002, the order of Mamlatdar and ALT, Borsad was again quashed and the order of the Deputy Collector, Anand was restored and with that the Appellant lost his status of tenant.

13. The record also reveals that the Appellant preferred Review Application No. 19 of 2006 in Review Application No. 14 of 2002, which came to be rejected by the Tribunal vide order dated 23.11.2007. Once again the Appellant preferred another Review Application No. 6 of 2008 in Revision Application No. 516 of 1998, which also came to be rejected, holding that the same was not

maintainable.

14. At that stage, the Appellant preferred Special Civil Application No. 13578 of 2008 and challenged the order passed by Gujarat Revenue Tribunal on 11.07.2006.

15. It deserves to be noted that in the same writ petition, the Appellant has also challenged two other orders dated 23.11.2007 and 04.06.2008, passed in the two applications, preferred by the Appellant. In any case, the Appellant could not have challenged these two orders in one writ petition, however, be that as it may as we are not going to this issue for the present.

16. Learned Single Judge, having gathered all the facts, which we have reproduced in our judgment, came to conclusion that the Tribunal was absolutely justified in allowing Review Application, preferred by heirs of Madhusudan Ratilal Thakar as fraud was on the face of the record. Learned Single Judge in Paragraph No. 11 of his judgment observed as under:

11. Considering the aforesaid facts and circumstances of the case, Gujarat Revenue Tribunal while passing the order in Review Application specifically observed how the systematic fraud has been committed by Deviprasad Ratilal Thakar. Considering conduct of the Petitioner and Deviprasad Ratilal Thakar in obtaining consent decree and on the basis of which Revision Application No. 516/98 was allowed and even deleting the names of heirs of Madhusudan, inspite of the entry No. 8978 deleting the name of Deviprasad and solely relying upon earlier entry and conveniently not relied upon entry No. 8978 by which Deviprasad has relinquished his right, it cannot be said that the order passed by the Gujarat Revenue Tribunal in Review Application No. TEN/CA/14/1992 quashing and setting aside the order passed in Revision Application No. 516/98 on appreciation of evidence on record, quashing and setting aside the order passed by the Mamlatdar and ALT and to restore the order passed by the Deputy Collector, it cannot be said that the same is in any way illegal. On the contrary, looking to the facts and circumstances of the case and looking to the conduct of Deviprasad Ratilal Thakar, it appears to the Court that the Tribunal is absolutely justified in entertaining the Review Application No. TEN/CA/14/2002 and quashing and setting aside the order passed by Mamlatdar and ALT and restoring the order passed by Deputy Collector, which is not required to be interfered with by this Court.

17. We are in complete agreement with the findings recorded by the learned Single Judge and also the view taken by the learned Single Judge, while rejecting the petition.

18. However, in the present appeal, learned Counsel Mr. A.J. Patel appearing with learned Counsel Mr. Bhavir G. Patel has raised the following legal issues for our considerations. As these issues are important, we have thought fit to examine them in detail. The principal contentions raised on behalf of the Appellants are as under:

(i) Gujarat Revenue Tribunal while exercising the powers of revision u/s 76 of the Tenancy Act is not exercising any of the powers under the Bombay Revenue Tribunal Act and, therefore, the power of review conferred by Section 17 of the Tribunal Act is not available to the Gujarat Revenue Tribunal while deciding the revision applications u/s 76 of the Tenancy Act. It is submitted that the Tribunal Act itself makes the distinction between the powers exercised by the Gujarat Revenue Tribunal under the Tribunal Act and the very same Tribunal exercising the powers under the Tenancy Act.

(ii) The second contention raised is that whenever the Legislature has thought fit to confer powers of review upon the Gujarat Revenue Tribunal, it has provided so, specifically and unequivocally, but the very fact that such power of review is not conferred on the Tribunal while exercising the revisional powers under the Tenancy Act is a clear indication that the Tribunal is not to have any power of review while deciding the revision applications under the Tenancy Act.

(iii) The third contention is that the Tribunal is constituted under the Tribunal Act. Although the Tribunal Act confers the power of review, by virtue of power u/s 77 of the Act, the said power is available only when the Tribunal exercises the jurisdiction in respect of the cases arising under the provisions of the enactments specified in the First Schedule to the Tribunal Act. The Tenancy Act is not included in the First Schedule to the Tribunal Act, and therefore, the Gujarat Revenue Tribunal while exercising the powers under the Tribunal Act, cannot deal with the cases arising under the Tenancy Act. It is only on account of the specific provisions of Section 76 of the Tenancy Act that the Tribunal is vested with the jurisdiction to decide the revision application under the Tenancy Act and, therefore, the power of review conferred by Section 17 of the Tribunal Act is not available to the Gujarat Revenue Tribunal while exercising the power u/s 76 of the Tenancy Act.

(iv) The last contention of the learned Counsel, which, according to us, deserves to be considered closely, is assuming for a moment that Section 17 of the Bombay Revenue Tribunal Act confers power upon the Gujarat Revenue Tribunal to review its own orders, the power is only that of procedural review and not substantive review. It is submitted that the Revenue Tribunal is empowered to review its judgment or order to merely correct procedural technicalities on the principle that an act of Court shall prejudice no man—*actus curiae nemi non gravabit*. Elaborating further, counsel submits that the Revenue Tribunal has an inherent jurisdiction apart from statutory jurisdiction to correct any error committed by itself. It can invoke such jurisdiction and can exercise it in an appropriate case when its conscience is aroused and if it considers that without exercise of such powers the ends of justice would be frustrated. Learned Counsel submits that there is no power of substantive review and therefore the Tribunal cannot re-open the case and decide it on merits. Counsel further submits that in the present case the entire matter was reopened by the Tribunal and was heard on merits by reviewing its earlier judgment and order.

19. Per contra, it is submitted by the learned Counsel appearing on behalf of the Respondents as under:

No error is committed by the learned Single Judge in rejecting the petition of the Appellant much less an error of law warranting any interference in the present appeal.

20. It is submitted that the entire issue before the Gujarat Revenue Tribunal in review application was as to whether fraud has been played upon or not.

21. It is submitted that if it is a case of fraud and if any order is obtained by playing fraud, then, the same is a nullity and has to be considered as non est. It is further submitted that under such circumstances, the Tribunal would be well within its rights and power to review its judgment and look into the matter once again in larger interest of justice.

22. We have noticed that the issues which have been raised by the learned Counsel for the Appellant were subject matter of consideration before this High Court in the case of Atulbhai Balabhai Patel Vs. State of Gujarat, Learned Single Judge has answered the issue whether the Gujarat Revenue Tribunal, constituted under the Bombay Revenue Tribunal Act, 1957, while exercising the powers of revision u/s 76 of the Bombay Tenancy and Agricultural Lands Act, 1948, has the power to review its own decisions, by observing in paragraph 7 as under:

7. Having heard the learned Counsel for the parties, this Court finds considerable substance in the submission made by the learned Counsel for the Petitioners that the power of review u/s 17 of the Tribunal Act is available only in respect of cases arising under the enactments specified in the first schedule to the Tribunal Act. The provisions of Section 9 of the Tribunal Act clearly provide that the powers being conferred on the Tribunal to entertain and decide appeals and revisions under the Tribunal Act are only in respect of the enactments specified in the first schedule to the Tribunal Act. Admittedly, the Tenancy Act is not included in the first schedule to the Tribunal Act. Hence, the Tribunal while exercising the powers under the Tribunal Act, cannot deal with the cases arising under the Tenancy Act. Even under the provisions of Section 12 of the Tribunal Act, the Tribunal would not be in a position to entertain appeals or revisions under the Tenancy Act since the Tenancy Act is not one of the enactments in the first schedule. All that Section 12 of the Act does is merely to save the powers of the legislature to confer power on the Tribunal to decide appeals/revisions arising from orders under other enactments and that is how the power to hear revision applications u/s 76 of the Tenancy Act is conferred on the Tribunal by specific provisions of Section 76 of the Tenancy Act. In other words, what Section 12 of the Tribunal Act does is merely to save the powers or functions of the Tribunal conferred upon it or which may be conferred upon it by or under any other law to entertain and decide appeals/revisions or other proceedings. Section 12 of the Tribunal Act does not add to the powers or functions of the Tribunal under any other law. Hence, if the Tenancy Act does not confer any power of review upon

the Tribunal while exercising the revisional power u/s 76 of the Act, Section 12 of the Tribunal Act cannot be invoked to give wider meaning to Section 17 of the Tribunal Act. The words "the Tribunal may... review its own decision or order in any case..." merely mean that the Tribunal can review its own decision or order in any case arising under any enactment in the first schedule to the Tribunal Act. If the legislature intended that the Tribunal exercising revisional power u/s 76 of the Tenancy Act could exercise all the powers conferred upon the Tribunal under the Tribunal Act, the wording of Sub-section (2) of Section 76 of the Tenancy Act would have been quite different. The legislature could and would have simply provided that in deciding applications u/s 76 of the Tenancy Act, the Gujarat Revenue Tribunal shall exercise the same powers and follow the same procedure as are conferred on and prescribed for the Tribunal under Bombay Revenue Tribunal Act, 1957. It is to be noted that the power of review such as one conferred by the provisions of Order 47, Rule 1 of the CPC is a substantive power and is not a mere matter of procedure. The provisions of the Tenancy Act do not confer any such power of review on the Gujarat Revenue Tribunal. The revisional power of the Tribunal u/s 76 of the Tenancy Act itself is narrowly circumscribed. The Tribunal is not to exercise any original jurisdiction, but it merely sits in revision over the orders of the Collector, if the order is contrary to law or if the Collector failed to determine some material issue of law or if there was a substantial defect in procedure or there was failure to take evidence or there was error in appreciating important evidence which has resulted in the mis-carriage of justice. The legislature does not, therefore, appear to have intended to confer further powers as contained in the first proviso to Section 17 of the Tribunal Act which contains grounds of review, analogous to the grounds of review under Order 47 Rule 1 of the Code of Civil Procedure. Hence, the contention of the learned Counsel for the Respondents that the power of review of the Tribunal exercising the revisional powers u/s 76 of the Tenancy Act must be inferred as arising out of the provisions of Section 17 read with Section 12 of the Tribunal Act cannot be accepted.

23. In paragraph 9 of the said decision, it is observed as under:

9. It is, therefore, required to be clarified that the expression "review" is used in the two distinct senses, namely, (1) a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal. The principle that the power to review must be conferred by statute either specially or by necessary implication is inapplicable to decisions of a Judicial Tribunal which is supposed to do complete justice to the parties before it. To extend the principle to decisions rendered by a Judicial Tribunal would indeed lead to untoward and startling results. This general principle is, of course, subject to the rider that such

power of even procedural review may be excluded if there is any indication in the statute contrary to the aforesaid general principle. Having examined the scheme of the Tenancy Act, it is clear that there is nothing contrary to the aforesaid general principle to exclude the inherent power of the Tribunal for procedural review.

24. In paragraph 12, the final conclusion drawn by the learned Single Judge is as under:

12. In view of the above discussion, it is held that while the Gujarat Revenue Tribunal exercising the powers of revision u/s 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 does not have the power of reviewing its own decision on the basis of any statutory provisions contained in the said Act or in the Bombay Revenue Tribunal Act, 1957, the Tribunal does have the inherent power of procedural review as explained by a Division Bench of this Court in the case of *Ram Kirpal v. Union of India and Anr.* 1918 (3) GLR 92 .

25. Now, so far as the above referred judgment is concerned, the ratio of the same makes it abundantly clear that Gujarat Revenue Tribunal exercising the powers of revision u/s 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 does not have the power of reviewing its own decision on the basis of any statutory provision contained in the said Act or in the Bombay Land Revenue Tribunal Act, 1957, but the Tribunal does have inherent power of procedural review. We are in complete agreement with the principle laid down in the aforesaid judgment referred to above of this Court.

26. We may also refer to very important judgment of the Supreme Court in the case of *Grindlays Bank v. Central Industrial Tribunal and Ors.* Reported in (1980) Suppl SCC 420. In this case the Supreme Court highlighted the distinction between a procedural review and review on merits. The Supreme Court observed as under:

Furthermore, different considerations arise on review. The expression "review" is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the later sense that the court in *Patel Narshi Thakershi* case held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debita justitiae* to prevent the abuse of its process, and such power inheres in every court or Tribunal.

27. The Supreme Court in the case of *Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton Spinning and Weaving Mills Ltd. and Another*, has also considered this issue of procedural review and substantive review and, after considering the ratio as propounded in *Grindleyzs Bank* (supra) observed in paragraph 19 as under:

19. Applying these principles it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In *Grindlays Bank Ltd. v. Central Government Industrial Tribunal and Ors.* (supra), it was held that once it is established that the Respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be re-heard and decided again.

28. However, the most question to which we are called upon to answer is as to what would be the position in a case where fraud is alleged and established on the face of the record. Whether in such a case of fraud, can the Revenue Tribunal say that it has only got power of procedural review and not substantive review and therefore it would not go into the merits of the case to consider fraud, if played upon in obtaining the order which is sought to be reviewed.

29. We are of the view that no court or tribunal can be regarded as powerless to recall or review its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim. We have, no doubt, that the remedy to move for review/recalling the order on the basis of the newly discovered facts amounting to fraud of high degree cannot be foreclosed in such a situation.

30. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, the two Judges Bench of the Supreme Court held:

"Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. Such a judgment/decreed by the first Court or by the highest Court-has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings.

31. In *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*, the two Judges Bench of the Supreme Court held as under:

Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order.

32. In the case of *A.V. Papayya Sastry and Others Vs. Government of A.P. and Others*, the Supreme Court has observed as under:

It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

33. In the case of *Hamza Haji v. State of Kerala*, reported in AIR 2006 SC page 3026, the Supreme Court, in paragraph 13, observed as under:

13. The law in India is not different. Section 44 of the Evidence Act enables a party otherwise bound by a previous adjudication to show that it was not final or binding because it is vitiated by fraud. The provision therefore gives jurisdiction and authority to a Court to consider and decide the question whether a prior adjudication is vitiated by fraud. In *Paranjpe v. Kanade* ILR 6 Bom 148 it was held that it is always competent to any Court to vacate any judgment or order, if it be proved that such judgment or order was obtained by manifest fraud. In *Lakshmi Charan Saha v. Nur Ali* ILR Cal 936 it was held that the jurisdiction of the Court in trying a suit questioning the earlier decision as being vitiated by fraud, was not limited to an investigation merely as to whether the Plaintiff was prevented from placing his case properly at the prior trial by the fraud of the Defendant. The Court could and must rip up the whole matter for determining whether there had been fraud in the procurement of the decree.

34. In *Manindra Natha Mitra v. Hari Mondal* 24 CWN 133 the Court explained the elements to be proved before a plea of a prior decision being vitiated by fraud

could be upheld. The Court said-

with respect to the question as to what constitutes fraud for which a decree can be set aside, two propositions appear to be well established. The first is that although it is not permitted to show that the Court (in the former suit) was mistaken, it may be shown that it was misled, in other words where the Court has been intentionally misled by the fraud of a party, and a fraud has been committed upon the Court with the intention to procure its judgment, it will vitiate its judgment. The second is that a decree cannot be set aside merely on the ground that it has been procured by perjured evidence.

35. The position was reiterated by the same High Court in *Esmile-Ud-Din Biswas and Anr. v. Shajoran Nessa Bewa and Ors.* 132 INDIAN CASES 897. It was held that it must be shown that fraud was practised in relation to the proceedings in the Court and the decree must be shown to have been procured by practising fraud of some sort upon the Court. In *Nemchand Tantia v. Kishinchand Chellaram (India) Ltd.* 63 CWN 740 it was held that a decree can be re-opened by a new action when the court passing it had been misled by fraud, but it cannot be re-opened when the Court is simply mistaken; when the decree was passed by relying on perjured evidence, it cannot be said that the court was misled.

36. What can be deduced from catena of case law referred to above, that though Gujarat Revenue Tribunal may not be empowered to undertake substantive review on merits, in exercise of power u/s 17 of the Bombay Revenue Tribunal Act, but, in cases of fraud, no Tribunal can be regarded as powerless to review/recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim. Therefore, as observed earlier in the judgment we have no doubt that the remedy to move for recalling/review of the order on the basis of the newly discovered facts amounting to fraud of high degree cannot be foreclosed in such a situation.

37. We may now deal with second contention of learned Counsel as regard to the non-compliance with Order-47, Rule-8 of the Code of Civil Procedure. Order-47, Rule-8 of the CPC reads as under:

When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

38. Order 47, Rule 8 of the CPC prescribes that when the application for review is granted, a note thereof shall be made in the register and the Court may make rehearing of the case at once and make such order in regard to rehearing as it thinks fit. In the present case, it is evident from the record that after the review application was presented, the same was admitted for hearing and notices were issued to the Appellant herein and to other parties. Thereafter, the Tribunal passed a composite order granting the review application and directing forthwith rehearing of the case. When the requirements of Order 47, Rule 4(2) is satisfied

and the mandatory provisions have been complied with, mere omission to comply with Order 47, Rule-8 cannot be said to be a breach, for the simple reason that there was no contravention of Sub-rule 2(a) and (b) of Rule 4 of Order 47 of the Code of Civil Procedure. In this view of the matter, we do not find any substance in the said submission. Even if, it is assumed for a moment that it is a lapse on the part of the Tribunal, it would still remain a procedural lapse, for which the Appellant should demonstrate how it has caused prejudice to him or how it has materially affected the merits of the case. On the contrary, there is a finding recorded by the learned Single Judge that in spite of the fact that the matter was adjourned for three times by the Tribunal, the Appellant or his advocate did not remain present and then, ultimately, the Tribunal was left with no other option, but to proceed with the matter ex-parte.

39. In view of our discussion as regards the position of law, rival contentions of the respective counsel and in the facts and circumstances of the case, we are of the view that the appeal is devoid of any merits and the same deserves to be dismissed. The appeal is dismissed with no order as to costs.