

IN THE HIGH COURT OF TRIPURA
AGARTALA

FAO No.01 of 2022

- 1. Smt. Nihar Bhowmik**
W/O Lt. Sadananda Bhowmik Resident
of 32, Dhaleswar, Assam Agartala
Road, P.O- Agartala College P.S- East
Agartala, Agartala West Tripura,
PIN799004
- 2. Smt. Manisha Bhowmik**
D/O - Lt. Sadananda Bhowmik W/O-
Sri. Mrinmoy Nath Resident of
Deshpriya Road, (Sonai Road) Silchar,
Assam PIN- 788006
- 3. Smt. Manika Bhowmik**
D/O-Lt. Sadananda Bhowmik W/O- Sri.
Sankar Choudhury Resident of
Ramnagar road no.2 P.O. Ramnagar
P.S- West Agartala West Tripura, PIN-
700002
- 4. Smt. Bichitra Bhowmik**
D/O Lt. Sadananda Bhowmik W/O Sri.
Ajit Debnath Resident of Jail Ashram
road, Dhaleswar P.S. East Agartala
Dist- Tripura West, PIN 799007
- 5. Sri. Dipankar Bhowmik**
S/O Lt. Sadananda Bhowmik Resident
of 32 Dhaleswar, Assam- Agartala Road
P.O Agartala College, P.S. East Agartala
Dist Tripura West, PIN- 799004

..... Appellant(s)

- V e r s u s -

- 1. Sri. Bhabananda Bhowmik**
S/O Lt. Chandra Kumar Bhowmik
Chandra saralanjaali 32/123B,
Dhaleswar P.O. Dhaleswar, P.S East
Agartala, Dist Tripura West, PIN-
799004

..... Review Petitioner Respondent

- 2. Sri. Tapas Bhowmik**
S/O Lt. Sadananda Bhowmik Resident
of 32, Dhaleswar, Assam- Agartala
Road, P.O. Agartala College, P.S-

Agartala, District Tripura West, PIN 799004

3.

M/S U.S. Enterprise
(dealer for Jindal Aluminium Ltd.)
Represented by Sri. Sahedeb Paul S/O
Unknown, proprietor/32, Dhaleswar,
Assam- Agartala Road, P.O Agartala
College, P.S. East Agartala, District
Tripura West, PIN- 799004
4.

Saloon Janashree
(Represented by Sri. Ramakanta Shil,
S/O unknown proprietor 32, Dhaleswar,
Assam- Agartala Road, P.O. Agartala
College P.S. East Agartala District
Tripura, West, PIN- 799004.)
5.

Shiva Shakti Medicals
(Represented by Sri. Hiralal Saha) S/O
unknown proprior 32, Dhaleswar,
Assam-Agartala Road, P.O. Agartala
College P.S. East Agartala District
Tripura, West, PIN – 799004
6.

Puspa Printing Works
(Represented by Sri. Biswajit Bhowmik)
S/O unknown proprior 32, Dhaleswar,
Assam-Agartala Road, P.O. Agartala
College P.S. East Agartala District
Tripura, West, PIN- 799004
7.

M/S Nagendra Chandra Saha
(Represented by Sri. Gopal Saha S/O
Lt. Nagendra Chandra Saha proprietor,
32, Dhaleswar, Assam-Agartala Road,
P.O. Agartala College, P.S. East
Agartala District Tripura, West, PIN -
799004

..... **Defendant-Respondent(s)**

For the Appellant (s)	:	Mr. P. Rathor, Adv.				
For the Respondent (s)	:	Ms. P. Dhar, Adv. Mr. H. Debbarma, Adv. Mr. S.D. Choudhury, Adv.				
Date of hearing	:	30.11.2023				
Date of delivery of Judgment & order	:	21.12.2023				
Whether fit for reporting	:	<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td>√</td><td></td></tr></table>	YES	NO	√	
YES	NO					
√						

**HON'BLE MR. JUSTICE ARINDAM LODH
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

JUDGMENT & ORDER

[S. Datta Purkayastha, J]

The appeal arises from the order passed by Civil Judge, Sr. Division, Court No.2, West Tripura, Agartala on 13.09.2021 in Civil Misc (Review) 05 of 2017 in Title Suit (Partition) 52 of 2015. Said court while reviewing its judgment dated 06.12.2016 in Title Suit (Partition) 52 of 2015 recalled the same along with the preliminary decree and subsequent final decree drawn thereupon, with the following observations:

"Resultantly the judgment dated 6th December, 2016 passed and final decree drawn on 13.12.2017 respectively are hereby recalled and as such OP/plaintiffs i.e. the plaintiffs of the T.S.(P) 52 of 2015 including the OP/defendant No.1 of the T.S(P) 52 of 2015 shall not be entitled to any advantages accrued to them as per judgment dated 6th December, 2016 passed and final decree drawn on 13.12.2017 in connection with suit No. T.S.(P) 52 of 2015."

[2] Thus, at the first blush, it appears that the trial court set aside the judgment of preliminary decree and subsequent final decree drawn thereon in said suit but did not proceed further to decide the suit afresh.

[3] The reasons for such review as shown by the trial court is that one Lt. Chandra Kumar Bhowmik left certain properties which were inherited by his 5[five] sons, namely Sadananda Bhowmik (now deceased), Sri Dayananda Bhowmik, Sri Rabindra Bhowmik, Sri Krishnananda Bhowmik and Sri Bhabananda Bhowmik [review petitioner]. The said property was stated to have been purchased in the name of late Sadananda Bhowmik by his father when he was

minor and thereafter, based on deed of family arrangement, earlier another judgment was passed and decree was drawn previously in another suit bearing No. T.S. 80 of 1995 wherein each of the legal representatives of said Late Chandra Kumar Bhowmik got certain specific properties as per their share. Later on, all the legal heirs of Late Sadananda Bhowmik instituted a suit being T.S.(P) 52 of 2015 against one of their brother, namely Tapash Bhowmik and his some tenants seeking partition of the land of their deceased father which was decreed by the above said judgment dated 06.12.2016 and the trial court based its decision mainly on the finally published Khatian standing in the name of legal representatives of said Sadananda Bhowmik in respect of the suit land of that suit.

[4] Primary reasons as shown by the trial court for reviewing the above said judgment 6.12.2016 of T.S.(P) 52 of 2015, are that the facts of said deed of family arrangement and granting of decree in T.S.80 of 1995 were suppressed by the plaintiffs in the subsequent suit and that the plot numbers mentioned in the decree of T.S.80 of 1995 also partly covers the suit land of T.S.(P) 52 of 2015. Therefore, according to the trial court, if the judgment and decree passed in said T.S. 80 of 1995 would be brought on records earlier by the plaintiffs, the subsequent decree would not have been passed by court and the subsequent judgment was obtained by them by exercising fraud on the court.

[5] Regarding maintainability of the review petition by third party, the trial court also observed in view of the decision of Hon'ble

Supreme Court in **Union of India vs. Nareshkumar Badrikumar Jagad and others**, reported in **(2019) 18 SCC 586** that any review petition filed by any stranger to a suit, if aggrieved by said judgment, is maintainable.

[6] During hearing, Mr. P. Rathor, learned counsel appearing for the appellants argued that the review petitioner was not a party to the original suit and therefore, he had no *locus standi* to submit the review petition and moreso, the way the trial court had set aside the judgment and the preliminary decree, even after passing of the final decree, was not permissible within the realm of Order XLVII of the Civil Procedure Code [in short, the CPC].

[7] Mr. H. Debbarma, learned counsel appearing for the respondent No.1 sought adjournment of the hearing which was turned down by this court. He however supported the impugned order to be sound and reasoned one.

[8] Mr. S.D. Choudhury, learned counsel appearing for the respondent No.3 submitted that his client had no interest in this litigation and therefore, he had nothing much to submit in this appeal.

[9] After hearing the learned counsel appearing for the parties, the following 3[three] points are taken up for decision in this appeal:

[i] Whether any person not being a party to a suit or proceeding has any scope to submit petition for review of the judgment or order passed by any court in that suit or proceeding.

[ii] Whether the procedure as was adopted by the trial court to review the judgment was proper.

[iii] Whether the trial court was justified to upset the judgment passed after considering all the evidences and materials placed on record, under the garb of Section 114 and Order XLVII, CPC.

[10] To deal with point no.1 first, the relevant provisions of CPC regarding review as embedded in Section 114 and Order XLVII of CPC, are extracted below.

114. 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 XLVII Rule 1,CPC:

Rule 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, 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 of 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] Both the above said provisions open with the words “any person considering himself aggrieved”. On plain reading of the provisions, it emerges that ‘any person’ has been consciously used by the legislature to cover up many contingencies and eventualities, and it did not limit the benefit of the provision only to ‘any party’. However, the review petition, can only be entertained if the conditions as enumerated in the provision of Order XLVII, rule 1, CPC are fulfilled. Said provisions contain different parts carrying with following conditions or stipulations. The first part contains the followings:

- i) Where an appeal is allowed, but no appeal has been preferred, or**
- (ii) Where no appeal is allowed, or**
- (iii) Against a decision on a reference from a Court of Small Causes,**

The second part contains the followings -

- i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by the review petitioner at the time when the decree was passed or order made, or**
- ii) On account of some mistake or error apparent on the face of the record, or**
- iii) For any other sufficient reason,**

The third part contains a single condition applicable to a review petitioner-

Who..... desires to obtain a review of the decree passed or order made against him.

[12] Therefore, on close study of the provision of Order XLVII, r.1, CPC in its entirety, we are of the view that any person including a stranger to the suit/proceeding may seek review of any judgment or order on any of the grounds enumerated above, provided that said judgment/order under challenge should be passed against him. The words 'decree passed or order made' is of wider amplitude and should not be given any restrictive meaning.

[13] Different High Courts expressed different views in this regards earlier. In ***Shapoorji Data Processing Ltd. vs. Ameer Trading Corporation Ltd.***, reported in **AIR 2003 Bombay 228**, Ld. Single Judge of Bombay High Court observed that the expression 'person aggrieved' under Order XLVII Rule 1 is wider in amplitude and scope than the expression 'Party' under Order XLVII Rule 2 which restricts the parties to the lis.

[14] The Division Bench of the Delhi High Court in ***Bharat Singh vs. M/S. Sheo Prashad Giani Ram & others***, reported in **AIR 1978 Del 122** expressed that review application can be filed only by a party to a lis and not by a third party.

[15] Learned Single Judge of Karnataka High Court in ***C.P. Bharathi & Anr. vs. Anjanappa***, reported in **AIR 2007 Karnataka 31**, was of the view that if a person is not a party to the suit and has not suffered a decree either by the trial court or by the appellate court cannot maintain the petition for review.

[16] In **Lalzakhama & Ors. vs. Rotluanga & Ors.**, reported in **1995 (III) GLT 105**, learned Single Judge was of the view that the word "any person" appearing in Order XLVI Rule 1 CPC, means a person who was a party or one of the parties on either side to the judgment which is sought to be reviewed; and not the third party.

[17] The Division Bench of this High Court in **Folguni Laskar and ors. vs. State of Tripura and Ors.**, reported in **(2016) 2 TLR 251** held that *the word "any person" cannot be read isolatedly. It should be read together with other contents of the provision contained in Section 114 and Order 47 of C.P.C. which would manifestly reveal that the word "any person" occurred there-under, the provision means, a person who was a party, or one of the parties on either side of the judgment which was sought to be reviewed and not a third party.*

[18] However, recently, while discussing the scope of review, Hon'ble Supreme Court in **Union of India vs. Nareshkumar Badrikumar Jagad and others**, as noted earlier, observed as follows:

"18.....Order 47 of CPC restates the position that any person considering himself aggrieved can file a review petition. Be that as it may, the Supreme Court exercises review jurisdiction by virtue of Article 137 of the Constitution which predicates that the Supreme Court shall have the power to review any judgment pronounced or order made by it.

Besides, the Supreme Court has framed Rules to govern review petitions. Notably, neither Order 47 of CPC nor Order 47 of the Supreme Court Rules limits the remedy of review only to the parties to the judgment under review. Therefore, we have no hesitation in enunciating that even a third party to the proceedings, if he considers himself an aggrieved person, may take recourse to the remedy of review petition. The quintessence is that the person should

be aggrieved by the judgment and order passed by this Court in some respect.”

Similar view was also expressed by the Apex Court subsequently in ***Sanjay Kumar Agarwal vs. State Tax Officer and another***, reported in **2023 SCC OnLine SC 1406**.

The judgment in ***Folguni Laskar (supra)*** was passed by the Division Bench of this Court prior to the judgments of Hon’ble Supreme Court in ***Nareshkumar Badrikumar Jagad (supra)*** and ***Sanjay Kumar Agarwal (supra)***.

[19] In view of the above, it is held that review petition under section 114 and Order XLVII, CPC can also be maintained by a person who is not a party to any lis, if any decree is passed or order is made against him making him aggrieved thereby. In the light of the decision of Hon’ble Supreme Court in ***Nareshkumar Badrikumar Jagad (supra)*** and ***Sanjay Kumar Agarwal (supra)***, the ratio of ***Folguni Sarkar (supra)*** to the effect that the third party cannot file a petition for review under above said provisions of the Code is held to be *per incuriam*.

[20] Regarding the second point of decision, from the record it appears that after the review petition was filed, the trial court vide order dated 13.07.2020 called for the records of both the suits bearing nos. T.S.80 of 1995 and T.S.(P) 52 of 2015 and after perusal of both the records arrived at the findings that the suit land of the subsequent suit had also partly covered the land of T.S. 80 of 1995 and thereby the right of the review petitioner was affected and finally

on the ground of suppression of material facts, the judgment and decree passed earlier were upset.

[21] Order XLVII Rule 8 of the CPC as extracted below envisages the next procedure when the application for review is allowed by a Court.

8. Registry of application granted, and or for rehearing:

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

It is explicit from the above said provision that when the application for review is granted, a note thereof should be made in the concerned register and original case should be rehear again, if possible at once, or the Court may make such order in regard to rehearing as it thinks fit. Therefore, rehearing of the original case after the review has been ordered, is imperative.

[22] The Apex Court in ***Sushil Kumar Sen vs. State of Bihar***, reported in **(1975) 1 SCC 774** has observed as under:

2. It is well settled that the effect of allowing an application for review of a decree, is to vacate, the decree passed. The decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one (see Nibaran Chandra Sikdar v. Abdul Hakim: AIR 1928 Cal 418, Kanhaiya Lal v. Baldev Prasad : ILR (1906) 28 All 240, Brijbaso Lal v. Salig Ram: ILR (1912) 34 All 282 and Pyari Mohan Kundu v. Kalu Khan: ILR (1917) 44 Cal 1011].

[23] Therefore, the proper procedure should be when a petition for review is allowed the original case should be re-opened again and parties would be heard afresh and thereafter, the final judgment or order shall be passed. In the instant case, the trial court erroneously stopped itself from rehearing the case after it decided to allow the

review petition and without pronouncing any fresh judgment and passing any fresh decree, put to an end there, which is not permissible at law.

[24] The trial court upset the entire judgment and decree passed in the preliminary form and also the final decree passed thereupon, without having any pleading or evidence led by the review petitioner in the original suit and *suo moto* took into consideration the materials available in both the records of both the suits though no part of the same was proved into evidence in the subsequent suit. For adoption of such wrong procedure and for non-compliance of Order XLVII Rule 8 CPC, there was no scope either from the side of the review petitioner and also from the side of the present appellants to adduce any further evidence or rebuttal evidence against the plea of the review petitioner. Therefore, the procedure adopted by the trial court is unacceptable and is, therefore, required to be interfered with.

[25] Now, we proceed to deal with the point no.III. In catena of decisions it is already held by the Apex Court that the Court of review has only a limited jurisdiction as circumscribed in Order XLVII Rule 1 of the CPC. The review proceeding is not an appeal and has to be strictly confined to the ambit of Order XLVII Rule 1 of the CPC. [Ref : ***Meera Bhanja (Smt.) vs. Nirmala Kumary Choudhury (Smt.)***, reported in **(1995) 1 SCC 170**, & ***D.R. Somayajulu and others vs. Attili Appala Swamy and others***, reported in **(2015) 2 SCC 390**].

[26] In ***Parsion Devi and others vs. Sumitri Devi and others***, reported in **(1997) 8 SCC 715**, it was held by the Apex Court that an error which is not self-evident and has to be detected by a process of reason, can hardly be said to be an error apparent on the face of the record to justify the exercise of power of review by a court.

[27] Long earlier, Hon'ble Supreme Court in ***Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma and others***, reported in **(1979) 4 SCC 389** has observed that 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. It may not be exercised on the ground that the decision was erroneous on merits. But in the case in hand, practically the trial court set aside its previous findings with the anxiety that for alleged suppression of above said facts of family arrangement and previous judgment, the subsequent decision has been rendered erroneous. In fact in the subsequent suit, the review petitioner was not a party and therefore, the decree passed in that subsequent suit was not binding on him. Even if fraud was exercised on the court by the plaintiff of that suit or he was likely to be affected by said decree, separate remedies were available to him.

[28] What is the actual land belonged to the review petitioner and whether same is included in the subsequent suit etc. are matter of thorough judicially scrutiny and therefore, same cannot be decided by a court while exercising jurisdiction of review under Order XLVII of

CPC. The trial court, therefore, was not justified in upsetting the judgment in above said manner.

[29] One disturbing fact also came to our notice that the hearing of the review petition done by the court below on 18.02.2020 and the impugned order was passed on 13.09.2021 i.e. after more than one and half years. The case was adjourned from 26.05.2020 till 19.01.2021 due to advent of Covid Pandemic. As per provision of Order XX Rule 1 of CPC, any judgment after conclusion of hearing of any suit is required to be pronounced preferably within 30 days and if for any exceptional or extra-ordinary circumstances, same cannot be done, it should be pronounced within 60 days from the date of conclusion of hearing. Above said principle should also be tried to be followed in case of any final order passed in any review petition under Order XLVII of CPC. When the trial court was not in a position to pass its final order on the said review petition for such a long period after hearing was concluded, for whatever be the reason thereof, it could rehear the matter afresh and pass final order thereafter. When there is long delay in passing of final order after hearing is concluded, there remains the possibility of forgetting the contentions of the parties and arguments placed by them before the Court.

[30] In view of the above, the impugned order dated 13.09.2021 passed in Civil Misc. (Review) 5 of 2017 in connection with T.S. (P) 52 of 2015 by Civil Judge, Sr. Division, Court No.2, West Tripura, Agartala is hereby set aside.

The ratio of decision of ***Folguni Laskar and ors. vs. State of Tripura and Ors.***, reported in **(2016) 2 TLR 251** of this Court is held *per incuriam* to the extent as discussed above.

Judgment be circulated to all Judicial Officers of the State.

Accordingly, this appeal stands allowed and disposed of.

Send down the LCR.

Pending application(s), if any, also stands disposed of.



JUDGE

JUDGE

Sujay

RUDRADEEP BANERJEE
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