

**HIGH COURT OF TRIPURA
AGARTALA
Review Petition No.07 of 2024**

Sri Sailesh Paul,
son of Late Surendra Chandra Paul,
resident of Village-Deolia Tilla,
Dhalabil, P.O. Khowai Tea Garden,
P.S. Khowai, District-Khowai, Tripura

----Petitioner(s)

Versus

- 1. Sri Ranjit Paul @ Moran Paul,
2. Sri Sanju Paul,
3. Sri Samarjit Paul,**

all are sons of Late Radha Govinda Paul
and all are residents of Village- Deolia Tilla,
Dhalabil, P.O. Khowai Tea Garden,
P.S. Khowai, District-Khowai, Tripura

----Respondent(s)

For Petitioner(s)	:	Mr. P.K. Dhar, Sr. Adv. Mr. R. Debnath, Adv.
For Respondent(s)	:	Mr. S. Lodh, Adv. Mr. Subham Majumder, Adv.
Date of Hearing	:	23.08.2024
Date of delivery of Judgment & Order	:	28.08.2024
Whether fit for reporting	:	YES

**HON'BLE MR. JUSTICE BISWAJIT PALIT
Judgment & Order**

This application under Section 114 read with Order XLVII Rule 1 of CPC is preferred seeking review of the judgment and order and decree dated 23.04.2024 passed by this High Court in RSA No.04 of 2022. By the said judgment of the High Court, the judgment and decree delivered by Learned District Judge, Khowai District, Tripura in connection with First Appeal No. T.A.09 of 2019 which arose out of the judgment and decree dated 20.03.2019 passed by Learned Civil Judge,

Senior Division, Khowai, Tripura in connection with Case No.T.S.39 of 2016 was affirmed by this High Court.

[2] Heard Mr. P.K. Dhar, Learned senior counsel assisted by Mr. R. Debnath, Learned counsel appearing for the review petitioner as well as Mr. S. Lodh, Learned counsel assisted by Mr. Subham Majumder, Learned counsel appearing for the respondents.

[3] In course of hearing of argument, Mr. P.K. Dhar, Learned senior counsel appearing for the review petitioner submitted that the Learned First Appellate Court in the judgment committed an error which was over looked by this High Court at the time of delivery of judgment in RSA No.04 of 2022. According to Learned senior counsel, the Learned First Appellate Court in the last part of the judgment dated 27.08.2021 gave the following observation which has caused grave injustice to the petitioner and the same is also error apparent on the face of record which needs to be set aside for the sake of justice. As submitted by Learned senior counsel, the said last operative portion of the judgment of the Learned First Appellate Court runs as follows :

"10. It is stated by the parties that already decree of Ld. Trial Court was executed, however, liberty is granted to the defendants to pray for restitution of possession of the suit land in their favour in the proper Forum, if at all any property was taken out from their possession beyond the suit land as decreed today, and in that case said Ld. Court will appoint a Survey knowing Commissioner to locate the suit land by its boundary description and possession of excess land, if any, taken out from the possession of the defendants will be restored to them. Needless to say, the cost of Survey Commissioner will be borne by the defendants."

Referring the same, Learned senior counsel further submitted that the review petitioner has satisfied with the judgment and decree delivered by this Court but if that part of the judgment of the Learned First Appellate Court is not modified to the extent of their possession then, the petitioner would suffer irreparable loss. It was further submitted that admittedly one Sukhamoy Paul was the original

owner of 41 decimals of land and out of that, he transferred 38 decimals of land to the petitioner vide registered deed bearing No.1-324 dated 23.02.1993. But thereafter, said Sukhamoy Paul further transferred land measuring 0.12 acres (6 gandas) to the respondent-defendants in the year 2006 for which he had no authority to transfer the said quantum of land after disposal of 38 decimals of land to the petitioner. Now, by the said judgment, the respondents are claiming ownership for the land measuring 12 decimals for which said Sukhamoy Paul was not illegally authorized/permitted to sell as he had no right to transfer the said quantum of land to the respondent/Ops, after disposal of 38 decimals of land to the petitioner. Now, with the strength of that judgment, the respondents are claiming the land of the review petitioner for which the relevant portion of the judgment of the First Appellate Court which was affirmed by this Court needs to be modified to the extent that the OP-respondents cannot claim more than 3 decimals of land for which Learned senior counsel sought for interference of this Court by invoking review jurisdiction.

[4] On the contrary, Mr. S. Lodh, Learned counsel appearing for the respondents in course of hearing submitted that this present petition is not maintainable which is liable to be dismissed with costs. According to Learned counsel for the respondents, in a review proceeding, it is the duty of the petitioner to draw the attention of the Court that there was error apparent on the face of record which the petitioner has failed to show in this case and until and unless the error apparent on the face of the record is shown by the petitioner then there is no scope to entertain the review petition because by invoking the review jurisdiction, the

petitioner cannot claim for the relief of appeal over the judgment passed by this Court in second appeal.

[5] Furthermore, according to Learned counsel for the respondents, the decree for which the suit was filed has already been executed and now there is no scope to entertain this petition filed by the petitioner for which this petition is liable to be dismissed with costs.

[6] Both the parties in course of hearing of argument referred few citations which would be discussed later on. For the sake of convenience, I would like to refer herein below the relevant provision of Order XLVII Rule 1 of CPC regarding exercise of review jurisdiction which is as follows :

**"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 to the Court which passed the decree or made the order."**

[7] In the given case, the review petitioner as plaintiff filed the suit before the Court of Learned Civil Judge, Senior Division, Khowai for decree of right, title and interest and for decree of permanent injunction over the suit land and in the said suit after conclusion of trial, Learned Trial Court below by judgment dated 20.03.2019 decreed the suit in favour of the plaintiff. For the sake of convenience, I would like to refer herein below the operative portion of the judgment and decree of the said Learned Trial Court in T.S.No.39 of 2016 which runs as follows :

**"9. As a result it is declared that the plaintiff has right, title and interest over the suit land and it is directed that the defendants be evicted therefrom and also perpetual injunction is granted preventing the defendants and their men and agents from disturbing the peaceful possession of the plaintiff upon the suit land.
10. Hence, the suit is decree on contest with cost."**

11. Prepare decree accordingly and put up the signature within fourteen days from today, latest on 03.04.2019.

12. The judgment is given under my hand and seal of this Court on this the 20th of March, 2019."

[8] Challenging that judgment, the respondent-defendants preferred an appeal before the Court of Learned District Judge under Section 96 of CPC and the Learned District Judge by judgment dated 27.08.2021 and decree dated 24.09.2021 partly modified the decree of the Learned Trial Court in Title Appeal No.09 of 2019. For the sake of convenience, I would like to refer herein below the operative portion of the judgment and order of the Learned First Appellate Court which runs as follows :

"10. On the basis of the discussion made above, the right, title and interest of the plaintiff in the suit land is declared according to its boundary description, and the survey plots as mentioned in the Schedule of the plaint will have no bearing in the decree.

The plaintiff is entitled to recovery of possession of the suit land based on its boundary description from the defendants through due process of law.

It is stated by the parties that already decree of Ld. Trial Court was executed, however, liberty is granted to the defendants to pray for restitution of possession of the suit land in their favour in the proper Forum, if at all any property was taken out from their possession beyond the suit land as decreed today, and in that case said Ld. Court will appoint a Survey knowing Commissioner to locate the suit land by its boundary description and possession of excess land, if any, taken out from the possession of the defendants will be restored to them. Needless to say, the cost of Survey Commissioner will be borne by the defendants."

[9] Thereafter, the original plaintiff being dissatisfied with the decree of the Learned First Appellate Court further preferred the second appeal under Section 100 of CPC before this High Court which was numbered as RSA No.04 of 2022. This High Court by judgment by dated 23.04.2024 dismissed the appeal by upholding the order of the Learned First Appellate Court :

"20. In the result, the appeal filed by the appellant-plaintiff stands dismissed being devoid of merit. The judgment of the Learned First Appellate Court dated 27.08.2021 and consequential decree dated 24.09.2021 is hereby upheld and accordingly it is affirmed.

Prepare decree accordingly.

Send down the LCRs along with the copy of this judgment.

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

[10] Challenging the judgment of the High Court, this application for review of the judgment is preferred by the original plaintiff as review

petitioner. In course of hearing of argument, Learned senior counsel for the review petitioner fairly submitted that the petitioner is satisfied with the judgment and decree but the last part/para of the judgment of the Learned First Appellate Court is error apparent on the face of record as because the same has caused undue hardship to the petitioner and if this Court does not exercise the review jurisdiction in that case, the petitioner would suffer irreparable loss. Learned senior counsel for the petitioner further submitted that if that part of the judgment of the Learned First Appellate Court is modified to the extent, that, the respondent-defendants cannot go beyond 3 decimals of land out of 41 decimals of land owned by one Sukhamoy Paul and also after selling 38 decimal of land to the petitioner-plaintiff, then the very purpose of justice would suffice.

[11] During the course of argument, Learned senior counsel for the petitioner referred few citations which are discussed herein below:

In **Chairman and Managing Director, Central Bank of India and Others versus Central Bank of India SC/ST Employees Welfare Association and Others** reported in **AIR 2016 SC 326** the Hon'ble Apex Court in para Nos.13, 14, 15 & 16 observed as under :

"13. We would be candid in our remarks that once an error is found in the order/judgment, which is apparent on the face of record and meets the test of review jurisdiction as laid down in Order XLVII Rule (1) of the Supreme Court Rules, 2013 read with Order XLVII Rule (1) of the Code of Civil Procedure, 1908, there is no reason to feel hesitant in accepting such a mistake and rectify the same. In fact, the reason for such a frank admission is to ensure that this mind of patent error from the record is removed which led to a wrong conclusion and consequently wrong is also remedied. For adopting such a course of action, the Court is guided by the doctrine of ex debito justitiae as well as the fundamental principal of the administration of justice that no one should suffer because of a mistake of the Court. These principles are discussed elaborately, though in a different context, in A.R. Antulay v. R.S. Nayak : AIR 1988 SC 1531.

14. We would also like to reproduce the following observations in S. Nagaraj v. State of Karnataka: 1993 Supp (4) SCC 595 :

"18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be

prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue."

15. The argument of public policy pressed by the respondents is of no avail. We are conscious of the fervent plea raised by the respondent employees that employees belonging to SC/ST category should be made eligible for promotion by providing the reservation in the promotional posts as well, as their representation is abysmally minimal. However, whether there is any such justification in the demand or not is for the State to consider and make a provision in this behalf. This was so recorded in the judgment itself in the following manner:

"24. In the first instance, we make it clear that there is no dispute about the constitutional position envisaged in Articles 15 and 16, insofar as these provisions empower the State to take affirmative action in favour of SC/ST category persons by making reservations for them in the employment in the Union or the State (or for that matter, public sector/authorities which are treated as State under Article 12 of the Constitution). The laudable objective underlying these provisions is also to be kept in mind while undertaking any exercise pertaining to the issues touching upon the reservation of such SC/ST employees. Further, such a reservation can not only be made at the entry level but is permissible in the matters of promotions as wells. At the same time, it is also to be borne in mind that Clauses 4 and 4A of Article 16 of the Constitution are only the enabling provisions which permit the State to make provision for reservation of these category of persons. Insofar as making of provisions for reservation in matters of promotion to any class or classes of post is concerned, such a provision can be made in favour of SC/ST category employees if, in the opinion of the State, they are not adequately represented in services under the State. Thus, no doubt, power lies with the State to make a provision, but, at the same time, courts cannot issue any mandamus to the State to necessarily make such a provision. It is for the State to act, in a given situation, and to take such an affirmative action. Of course, whenever there exists such a provision for reservation in the matters of recruitment or the promotion, it would bestow an enforceable right in favour of persons belonging to SC/ST category and on failure on the part of any authority to reserve the posts, while making selections/promotions, the beneficiaries of these provisions can approach the Court to get their rights enforced. What is to be highlighted is that existence of provision for reservation in the matter of selection or promotion, as the case may be, is the sine qua non for seeking mandamus as it is only when such a provision is

made by the State, a right shall accrue in favour of SC/ST candidates and not otherwise."

16. Once we find an error apparent on the face of the record and to correct the said error, we have to necessarily allow these review petitions."

Learned senior counsel further referred another citation in **State of Tripura and Anr. versus Dr. Shyam Lal Das** reported in **(2013) 2 TLR 272** this High Court in para-6 observed as under :

"6. In the above discussion, the Apex Court also noted that there is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction."

Referring the same, Learned senior counsel drawn the attention of the Court that if there is error apparent on the face of record then there is a scope for exercising review jurisdiction.

[12] Finally, Learned senior counsel drawn the attention of the Court that since the Learned First Appellate Court committed error at the time of delivery of judgment in the operative portion by granting liberty to the respondent-defendants for claiming restitution of possession of the land in their favour if their land is taken out from their possession beyond the suit land in the proper forum, in that case, with the strength of their title deed of 2006, the respondent-defendants would again cause disturbance to the review petitioner in peaceful possession/enjoyment of his purchased land. So, for correction of "error apparent on the face of record" he urged for allowing this review petition. Learned senior counsel further submitted that the respondents are only entitled to land measuring 0.03 acres and this direction is only required for permanent settlement of the dispute.

[13] On the other hand, Mr. S. Lodh, Learned counsel for the respondents as already stated in course of hearing of argument strongly countered the submission made by Learned senior counsel appearing for

the review petitioner and submitted that this petition is not maintainable as there is no error apparent on the face of record and further submitted that this petition is liable to be dismissed with costs. Learned counsel further submitted that after elaborate discussions this Court by the judgment dated 23.04.2024 in RSA No.04 of 2022 has upheld the judgment of the Learned First Appellate Court and now, with a view to harass the respondents, this petition is filed. Learned counsel further submitted that the scope of review jurisdiction is very much limited and at this stage, there is no scope to entertain the application filed by the petitioner as there is no merit to entertain the same. In support of his contention, Learned counsel for the respondents referred the following citations :

In **Pandit Dhana Mali versus Bhimabai (Dead) through LRs** reported in **(2007) 15 SCC 434** the Hon'ble Apex Court in para Nos.1, 2, 3 & 4 has observed as under :

"1. An application seeking review of the judgment passed by the High Court in second appeal has been dismissed on the ground 'not maintainable'.

2. The learned single Judge of the High Court has held that as against a judgment in second appeal "*a remedy by way of application of review is entirely misconceived*". This proposition seems to have been too widely stated by the learned Judge.

3. We clarify that a judgment in second appeal may also be open to review subject to a ground therefore being available within the meaning of Order 47 Rule 1 of the Civil Procedure Code.

4. So far as the present case is concerned, having heard the learned counsel for the petitioner independent of the view formed by the High Court, we are satisfied that a case for review of the judgment was not made out. The special leave petition is dismissed."

Learned counsel for the respondents further referred another citation of the Hon'ble Apex Court in **Arun Dev Apadhyaya versus Integrated Sales Service Limited and Another** reported in **(2023) 8 SCC 11** in para Nos.29, 30, 31, 32, 33, 34, 35, 36, 37 & 45 observed as under :

"29. A three Judge Bench of this Court comprising of Hon'ble Sri S.R. Das, C.J., M. Hidayatullah and Sri K.C. Das Gupta, J.J. in the case of Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale: AIR 1960 SC 137 discussed the scope of the phrase 'error apparent on the face of record'. The challenge before this Court in the said case was the judgment of the High Court on the ground whether it suffers from an error apparent on the face of the record. The High Court had issued a writ of certiorari and had quashed order of the Tribunal and restored that of the Mamlatdar. In para 8 of the report, the issue which was to be considered is reflected. The same is reproduced hereunder :

"8. The main question that arises for our consideration in this appeal by special leave granted by this Court is whether there is any error apparent on the face of the record so as to enable the superior court to call for the records and quash the order by a writ of certiorari or whether the error, if any, was "a mere error not so apparent on the face of the record", which AIR 1960 SC 137 can only be corrected by an appeal if an appeal lies at all."

30. After discussing the relevant material on record, the conclusion is stated in paragraph 17 of the report. The view was that where an error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. The view that long-drawn process of arguments to canvass a point attacking the order in a review jurisdiction, cannot be said to be an error apparent on the face of record. Relevant extract from paragraph 17 of the report is reproduced hereunder :

"17.....is the conclusion wrong and if so, is such error apparent on the face of the record ? If it is clear that the error if any is not apparent on the face of the record, it is not necessary for us to decide whether the conclusion of the Bombay High Court on the question of notice is correct or not. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self evident and if it can be established, it has to be established by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ. In our opinion the High Court was wrong in thinking that the alleged error in the judgment of the Bombay Revenue Tribunal, viz., that an order for possession should not be made unless a previous notice had been given was an error apparent on the face of the record so as to be capable of being corrected by a writ of certiorari."

31. Another case which may be briefly dealt with is the case of Parison Devi Vs. Sumitri Devi: (1997) 8 SCC 715 , where, this Court ruled that under Order XLVII Rule 1 CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. It also observed that a review petition cannot be allowed to be treated as an appeal in disguise.

32. A series of decisions may also be referred to wherein, it has been held that power to review may not be exercised on the ground that decision was erroneous on merits as the same would be the domain of the Court of appeal. Power of review should not be confused with appellate powers as the appellate power can correct all manners of errors committed by the subordinate courts. The following judgments may be referred:

- (1) Shivdeo Singh Vs. State of Punjab; AIR 1963 SC 1909**
- (2) Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma; AIR 1979 SC 1047**
- (3) Meera Bhanja (Smt.) Vs. Nirmala Kumari Choudhary (Smt.); (1995) 1 SCC 170**
- (4) Uma Nath Pandey Vs. State of U.P.; (2009) 12 SCC 40**

33. Recently, this Court in a judgment dated 24.02.2023 passed in **S. Murali Sundaram Vs. Jothibai Kannan : (2023) 13 SCC 515**, observed that even though a judgment sought to be reviewed is erroneous, the same cannot be a ground to review in exercise of powers under Order XLVII Rule 1 CPC. Further, in the case of **Perry Kansagra Vs. Smriti Madan Kansagra: (2019) 20 SCC 753**, this Court observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit in appeal over its own order.

34. In another case between **Shanti Conductors (P) Ltd. Vs. Assam SEB: (2020)2 SCC 677** this Court observed that scope of review under Order 47 Rule 1 read with Section 114 CPC is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue questions which have already been addressed and decided. It was further observed that an error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record.

35. From the above, it is evident that a power to review cannot be exercised as an appellate power and has to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

36. In the above backdrop of the scope of review to which these petitions are confined, we proceed to consider whether a case for review is made out or not.

37. As many as 18 grounds have been raised in the review petitions, we have considered not only the oral submissions advanced by Mr. Salve, learned Sr. Counsel, but have also perused all the grounds raised in the review petition. A close perusal of the judgment dated 10.08.2021 passed in **Gemini Bay Transcription (P) Ltd. v. Integrated Sales Service Ltd. : (2022) 1 SCC 753** reflects that all the grounds taken in the review have been discussed in detail and findings returned not accepting the claim of the Review Petitioner. What is sought to be argued is basically that the view taken is erroneous and therefore, impugned judgment deserves to be reviewed.

45. Each and every argument having been considered by this Court in its judgment dated 10.08.2021, the arguments advanced if accepted would result in expressing a different opinion on the points raised and decided, which we are afraid do not fall within the settled contours of Order 47 Rule 1 CPC relating to error apparent on the face of record. The other grounds of invoking the review power are neither existing nor have been raised in the present petitions."

Referring the same, Learned counsel for the respondents submitted that an error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long- drawn process of reasoning on the points where there may conceivably be two opinions.

[14] Finally, Learned counsel for the respondents submitted that in the given case, the petitioner has failed to culminate any error which

is apparent on the face of record in the judgment delivered by this Court and meanwhile, the decree for which the suit was filed has been executed by this time, so, at this stage, this present petition is liable to be dismissed with costs.

[15] After hearing both the sides at length and after going through the citations as referred by the parties in dispute it appears to this Court that this Court at the time of delivery of the judgment in RSA No.04 of 2022 dated 23.04.2024 in para Nos.15 to 19 have elaborately discussed all the rival contention of the parties and finally, uphold the judgment of the Learned First Appellate Court. For the sake of convenience, I would like to refer herein below the relevant paras of the judgment of the High Court dated 23.04.2024 in RSA No.04 of 2022 contained in para Nos.15 to 19 which are as follows :

15. I have heard arguments of both the sides and gone through the records of Learned Courts below including the exhibited documents relied upon by the parties. It appears to me that one Sukhamoy Paul, son of Thakurdhan Paul was the owners in possession of land measuring 0.41 acres of khatian no.364 jote no.361 under Mauja-Dhalabil and the aforesaid land measuring 0.41 acres was recorded in the name of said Sukhamoy Paul in the following manner in the ROR:

Old CS plot nos.	Revisional CS plot nos.	Classification	Quantum
213 part	396	Lunga	0.22
380 part	1300	Vastu(tilla)	0.12
300 part	1301	Bhita(tilla)	0.05
381/1509 part	1298	Lunga	0.02

Now, from the aforesaid land measuring 0.41 acres/shataks of land said Sukhamoy Paul sold land measuring 0.38 acres to the appellant-plaintiff vide registered deed bearing no.1-324 dated 23.02.1993. For the sake of convenience, I would like to mention hereinbelow the description of land sold by said Sukhamoy Paul in favour of the appellant-plaintiff as mentioned in the schedule of the deed:

Description of Land:
Pargana-Birchandrapur, PS-Khowai, Tehsil-Dhalabil, Khatian no.-364, Jote no.-361 within this CS plot nos.-213/380/300/ corresponding to hall CS plot nos.396/1300/1301/1298 bounded by northRajendra Deb, South Rabi Naik East Nagendra Biswas West Ashwini Banik within this boundary land measuring 0.38 shataks(19 gandas).

On the basis of the title deed, the appellant-plaintiff applied for mutation. Accordingly, vide mutation case no.73/94, the mutation authority allowed mutation in favour of the appellant-plaintiff and a separate ROR was prepared in his name in khatian no.568 under Mouja-Dhalabil, Tehsil-Khowai with the following descriptions of land:

Old CS plot nos.	Revisional CS plot nos.	Classification	Quantum
213 part	396	Lunga	0.22
380 part	1300	Vastu(tilla)	0.12
300 part	1301/4060	Bhita(tilla)	0.04

Thus, from the above, it appears that the mutation authority at the time of allowing mutation, on the basis of physical possession omitted mutation from old CS plot no. part corresponding to hall plot no.1298 and finally, on conclusion of trial, Learned Trial Court decreed the suit in favour of the appellant-plaintiff which was challenged by the respondent-defendants.

16. Now, according to respondent-defendants, said Sukhamoy Paul through Exhibit-B, Exhibit-A sold out 0.12 shataks of land to Radha Gobinda Paul, son of Late Mahananda Paul being the predecessor of the present respondentdefendants. On perusal of Exhibit-A, it appears that the vendor at the time of transfer of land measuring 0.12 acres of land in the year 2006 narrated the description of land as follows:

Description of land purchased by predecessor of the respondent-defendants:

Paragana-Birchandranagar, P.S – Khowai, T.K.- Dhalabil, Khatian no.-364, touji-217 within CS plot no380 bounded by north-R. Deb, South-Sukhomaoy Paul east Ranjit Paul West – Rasta.

Thus, from the contents of the deed, it appears in the year 2006 said Sukhamoy Paul sold out land measuring 0.12 acres(6 gandas) to the predecessor of the respondentdefendants. Now, whether said Sukhamoy Paul have had any authority to sell any land from CS plot no.380 is a different matters in issue which was not the case of the appellant plaintiff and the respondent-defendants herein. Further, it appears that the boundary descriptions of both the purchased lands are/were totally different.

17. Furthermore, if said Sukhamoy Paul transfers any land beyond his ownership from old khatian No.364 after disposal of 0.38 acres of land in favour of the appellant in the year 1993 then the respondent-defendants shall have the liberty to take proper recourse of law against Sukhamoy Paul if they so desires and furthermore, said Sukhamoy Paul in the year 2006 transferred 0.12 acres of land to the predecessors of the respondent-defendants. There is no any evidence on record that they sought redress in any forum against said Sukhamoy Paul.

18. Here, in the suit, we are only confined to the suit land and it appears that the appellant-plaintiff has been able to establish his valid right, title and interest over the suit land and for that the Learned Court below rightly decreed the suit in favour of the appellant-plaintiff and the Learned First Appellate Court also confirmed the decree in favour of the appellantplaintiff on the basis of boundary description not on the basis of the CS plot nos.

To counter the case of the appellant-plaintiff, the respondent-defendants could not adduce any cogent oral/documentary evidence on record before the Learned Trial Court.

19. Furthermore, as already stated on the basis of purchase vide mutation case no.73/94 the purchased land of the appellant-plaintiff was mutated by the appropriate authority. The appellant-plaintiff also did not challenge that order of mutation and as per mutation, he got land measuring 0.38 acres i.e. the land purchased by him from Sukhamoy Paul and from the contents of the deed, it appears that the vendor in the deed has clearly given the boundary of the land sold to the appellant-plaintiff which contained different plot nos. i.e. old CS plot no.213 corresponding to R.S. plot no.-396, old CS plot no.380 part corresponding to R.S. plot no.1300, old CS plot no.300 part corresponding to R.S. plot no.1301/4066 and I do not find any ambiguity to the recording of aforesaid land on the basis of boundary description in favour of the appellant-plaintiff. So, in my considered view, the Learned First Appellate Court rightly delivered the judgment and furthermore, Learned First Appellate Court specifically mentioned in the judgment that as the decree was executed and if it is found that any land of the respondent-defendant is given in possession to the appellant plaintiff beyond the suit land then through the Survey

Commissioner, land be identified and if required, excess land be restored to the respondent-defendants.

So, on perusal of the judgment of the Learned First Appellate Court, I do not find ambiguity in the judgment rendered by the Learned First Appellant Court and furthermore, before this Court also, the appellant has failed to satisfy the grounds for allowing the appeal showing any infirmity and perversity in the judgment of Learned First Appellate Court. The substantial questions of law are accordingly answered."

[16] So, from the aforesaid paras and also after hearing both the sides, it appears that the present petitioner has failed to make out any case to exercise the power of review as contained in Order 47 Rule 1 of CPC read with Section 114 of CPC showing any error apparent on the face of record. Thus, the present petition seems to be filed without any basis for which there is no scope on the part of this Court to interfere with the judgment delivered by this Court upholding the judgment of the Learned First Appellate Court.

In the result, the application seeking review of judgment passed by this Court dated 23.04.2024 in RSA 04 of 2022 deserves no consideration and accordingly, it stands dismissed being devoid of merit with costs.

JUDGE

Digitally signed by SABYASACHI
BHATTACHARJEE
Date: 2024.08.29 15:00:57 +05'30'

Sabyasachi B