

GAHC040001822024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Review Pet./1/2024

Tojum Lollen
Retired DDHS, Son of late Nyato Lollen, resident of Sipu Puyi Colony, PO and PS
Aalo, West Siang District, Arunachal Pradesh

VERSUS

Dagmo Karbi and Anr
Son of Late Yomdak Karbi, resident of Kombo Tarsu- I village, PO and PS Aalo, West
Siang District, Arunachal Pradesh 791001 2:Jumki Lollen
Age: 0
Occupation

Advocate for the Petitioner : Topi Jini

Advocate for the Respondent : Kemo Lollen

BEFORE
HONBLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 14.02.2024

Heard Ms. T. Jini, learned counsel for the petitioner. Also heard
Mr. Kemo Lollen, learned counsel for the respondent.

2. The petitioner has filed this petition under Order 47, Rule 1 of

CPC, 1908, praying for review/modification/alteration of the order dated 8.02.2024 passed by this Court in CRP No. 12 of 2023.

3. The case of the review petitioner is that the petitioner had preferred the Civil Revision Petition being CRP No. 12(AP)/2023 challenging the impugned Keba decision dated 16.02.2023 wherein, the head Gaon Burah of the Kombo Tarsu had taken the decision in an arbitrary and illegal manner being well aware of the fact that the dispute between the parties regarding disputed land was sub-judice before the Head Gaon Burah of Kombo Pomte.

4. The learned counsel for the review petitioner submits that this Court vide order dated 08.02.2024 held that as no documents were available in the record regarding boundary or demarcation of the respective land of both the parties, as such, it was difficult to decide as to who was the actual owner of the disputed land and the decision of the Keba was right or wrong. This Court also held that on the basis of oral submission of the parties and the statement of the witnesses given before the village authority, the right, title and possession of the parties cannot be declared. As such, this Court granted the liberty to both the parties to approach before the Civil Court claiming their rights over the disputed land. The learned counsel for the review petitioner has pointed out that this Court has not reflected in the order as to whether the order of the Keba dated 16.02.2023, was quashed or not.

5. According to the learned counsel for the review petitioner, the

order dated 08.02.2024 passed by this Court is clearly an error apparent on the face of the records, as such, the order is liable to be reviewed.

6. In support of his submission, the learned review petitioner has relied on the following case law reported in **(2022) 0 Supreme (Gau) 990** in the case of **Taje Jerang vs. Taje Jerang**.

7. On the other hand, the learned counsel for the respondent has submitted that on perusal of the order dated 08.02.2024 vide paragraph No. 24, direction was given to the parties to file an appeal before the appropriate authority.

8. I have heard the submissions of the learned counsel for both the sides.

9. After hearing the learned counsel for the parties as well as the background of the case, the question which is posed before this Court for consideration is whether under the facts and circumstances of the case, review lies under order 47, Rule 1 of CPC.

10. In the case of Perry Kansagra vs. Smriti Madan Kansagra reported in (2019) 20 SCC 753, the Hon'ble Apex Court has observed that while exercising the review jurisdiction in application under Order 47, Rule 1 read with Section 114 of CPC, the review Court does not sit in appeal over its own order. It is observed that a rehearing of the matter is impermissible in law. It is further observed that review is not appeal in disguise. It is observed that power of review can be exercised for correction of a mistake but not to

substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed that it is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy had been finally decided. After considering catena of decision of exercise of power of review and principle relating to exercise of review jurisdiction under Order 47, Rule 1 CPC, the Hon'ble Supreme Court had summed upon as under

-

” (i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of [Order 47 Rule 1 CPC](#).

(ii) Power of review may be exercised when some mistake or error apparent on the face of record is found. But error on the face of record must be such an error which must strike one on mere looking on the record and would not require any longdrawn process of reasoning on the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of

invoking the doctrine actus curiae neminem gravabit.”

It is further observed in the said decision that an error which is required to be detected by a process of reasoning can hardly be an error on the face of the records.

11. In the case of ***Shanti Conductors Pvt. Ltd. ANR. Vs. Assam State Electricity Board & Ors. reported in (2020) 2 SCC 677***, it was observed that the scope of review under Order 47, Rule 1 read with Section 114 of CPC is limited and under the guise of review, the petitioner cannot be permitted to re-agitate and re-argue questions which have already been addressed and decided. It is further observed that an error which is not self-evident and has to be detected by process of reasoning can hardly be said to be an error apparent on the face of the records justifying the Court to exercise its power under Order 47, Rule 1 of CPC.

12. Applying the law laid down by the Hon’ble supreme Court in the aforesaid case to the facts of the case in hand, the review petitioner has challenged the Keba decision dated 16.02.2023 by stating that the decision of this Court dated 08.02.2024 without passing any order whether Keba decision was right or wrong, was erroneous, which is not permissible in an application for review under Order 47, Rule 1 of CPC.

13. In case of review, the petitioner cannot be permitted to re-agitate and re-argue the question which had already been addressed and decided. Apparently, the grounds shown by the review petitioner

for review of the order of this Court dated 08.02.2024 is not an error apparent on the face of the record. The error which has been pointed out by the learned counsel for the review petitioner, may be an error which is required to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the records. Hence, the review petition lacks merits and is dismissed accordingly.

In view of the above observation, this Review Petition stands disposed of.

JUDGE

Comparing Assistant