

GAHC030002762024



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

Case No. : CRP/5/2024

Vanlalchhantluanga
S/o F.Malsawmdawngliana (L), R/o 7th Day Tlang, Aizawl, Mizoram

VERSUS

Sh F.Vanlalnuntluanga
S/o Vanhnuaithanga (L), R/o Nursery Veng, Aizawl, Mizoram

Advocate for the Petitioner : Ms. Lalawmpuii Fanai

Advocate for the Respondent : Mr. Zodinpuia Hnamte

ORDER

BEFORE

HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

10.09.2024

Heard Ms. Lalawmpuii Fanai, learned counsel for the petitioner. Also heard Mr. Zodinpuia Hnamte, learned counsel for the respondent.

2. This is an application under Section 115 of the CPC read with Section 151 CPC against the Order dated 29.11.2023 passed by the learned Senior Civil Judge-III, Aizawl District, Aizawl in Review Application No. 35/2022 arising out of Heirship Certificate No. 2230/2019.

- 3.** The brief facts of the case is that Vanhnuaithanga (L), who is the grandfather of the petitioner and the father of the respondent had left a landed property covered under LSC No. 333/1974 located at Nursery Veng, Aizawl, Mizoram.
- 4.** The respondent had previously applied for issuance of Heirship Certificate in respect of the said land in the year 2017, which was registered as Heirship Certificate No. 740/2017 and the petitioner submitted an objection, hence, the Heirship Certificate No. 740/2017 was dismissed by Order dated 09.09.2019.
- 5.** It is the further case of the petitioner that however the respondent filed for another Heirship Certificate in respect of LSC No. 333/1974 without issuing notice to the petitioner.
- 6.** It appears that the learned Senior Civil Judge-III, Aizawl District, Aizawl passed an Order dated 28.11.2019 and issued Heirship Certificate No. 2230/2019 to the respondent vide Memo No. 330 SCJ(A)-III/2019 dated 28.11.2019. Being aggrieved by the aforesaid order, the present Revision Petition has been filed.
- 7.** Ms. Lalawmpui Fanai, learned counsel for the petitioner submits that the Order dated 28.11.2019 is required to be interfered with, inasmuch as, despite there being grounds for review of the Order dated 28.11.2019, it was not reviewed by the learned Senior Civil Judge-III, Aizawl. She further submits that since the impugned Heirship Certificate was granted without issuing notice to the petitioner, the order granting Heirship Certificate is required to be reviewed.
- 8.** Per contra, Mr. Zodinpuia Hnamte, learned counsel for the respondent submits that there are no errors apparent on the face of the record and therefore, there is no ground for review and as such, the Trial Court has

correctly rejected the review application.

9. Before going to the submissions made by the learned counsels for both the parties, relevant portion of the Order dated 29.11.2023, which is assailed before this Court is reproduced hereunder for ready reference:-

“3. On the other hand, Ld. Counsel for the respondent submitted that the Heirship Certificate No. 2230 of 2019 was applied on the basis of the settlement between the surviving sons of Vanhnuaithanga wherein father of the petitioner No. 2 was alive and had consented to the application. Thus submitted that there is no error apparent on the face of the record while issuing the impugned order.

4. The main contention of the petitioners is that they were not given opportunity of being heard while the respondent had applied for the impugned order and Heirship Certificate No. 2230 of 2019. However, the respondent is the sole surviving son of Vanhnuaithanga and thus is the only direct legal heir of the deceased. Although opportunity of being heard were to be given to the petitioners as prayed for they are not entitled to their grandfather's property as per Chapter-VIII Inheritance of Father's (Head of Family) Property under the Mizo Marriage, Divorce and Inheritance of Property Act, 2014. Thus, it is held that there is no discovery of new and important matter or evidence nor mistake or error apparent on the face of the record nor any other sufficient reasons to review the order dated 28.11.2019 and Heirship Certificate No. 2230 of 2019. Hence, the petitioners are not entitled to the review as prayed for.”

10. It appears that the Trial Court has taken note that the petitioners are not entitled to their grandfather's property in terms of Chapter-VIII of the Mizo

Marriage, Divorce and Inheritance of Property Act, 2014. It appears that the Trial Court had rejected the review application on the ground that no error apparent on the face of record has been shown by the petitioner.

11. Apt to refer to Section 31 of Chapter-VIII of the Mizo Marriage, Divorce and Inheritance of Property Act, 2014, which is reproduced hereunder for ready reference:-

“31. In the absence of a 'Will', the following provision shall apply.

(1) On the death of the head of the family, the wife will automatically become the head of the family if she remains a chaste widow and looks after the welfare of her minor children. If the children have become majors, she needs to obtain no objection from the children to recognize her as the head of the family.

(2) The property left by the deceased father will be inherited by the sons who are not 'In dang' and the surviving wife of the Head of the Family equally. However, the youngest son will get one extra share provided he looks after members of the family who are not 'In dang'.

Provided further that unmarried daughter who has been looking after her parents and siblings being the main bread earner will also get a share of the property equivalent to the right of the mother/sons.

(3) If any of the son 'A' of the Head of the Family dies before the Head of the Family, then on the death of the Head of the Family, the Head of the Family's properties will be divided between the surviving sons of the Head of the Family who are not In dang' and the surviving wife and the share that would have gone to A would go to A's sons.

Provided that the youngest son will get one extra share. Provided further that 'A' was not In dang' or that the children of 'A' were not In dang' at the time of the death of the Head of the Family.

(4) If the Head of the Family has no son, then the property will be divided equally between the surviving wife of the Head of the Family and the unmarried daughters who are living with the surviving wife.

(5) In the event of all the sons being 'In dang' at the time of the death of the Head of the Family, and there being unmarried daughters, then the property will be shared between the wife, unmarried daughters and the surviving sons.

Provided that the youngest son shall get one extra share. The sons and daughters of the Head of the Family from a previous marriage who are living with the Head of the Family shall have the same right and interest as the sons and daughters of the later marriage.

(6) In the event of there being no sons or unmarried daughters then the property will go to the wife of the Head of the Family.

(7) In the event of there being no sons, unmarried daughters or wife, then the property will go to the married daughters in equal share.

(8) In the event of there being no sons or daughters and the wife from the surviving marriage having expired prior to the death of the Head of the Family, then the share of the properties to be inherited by the children from his previous marriage will be governed as per sub-section (1) to (6). However his wife from his previous marriages will not be entitled to any shares of the

property and her alleged share will go to the youngest son to the previous marriage.

(9) In the event of there being no sons, unmarried daughters, wife, married daughters, then the youngest illegitimate son will inherit the property. In the event of there being no illegitimate son, then the youngest illegitimate daughter will inherit. In the event of there being no illegitimate daughters, the brothers and sisters of the Head of the Family will inherit the property and the youngest brother will get one extra share.

(10) The personal property left by unmarried son who died while he was in his father's house and having no issue will be inherited by his surviving father. If the father had died, his surviving mother will inherit. If both the father and the mother had died, the surviving youngest brother will inherit. If there is no surviving brother, the youngest surviving sister will inherit. If he had a surviving son or daughter, the son will inherit. If he had a surviving daughter but no son, the surviving daughter will inherit, provided that son was paid.

(11) The personal property left by unmarried daughter who died while she was in her father's house and having no issue will be inherited by her surviving father. If the father had died, her surviving mother will inherit. If both the father and the mother had died, the surviving youngest brother will inherit. If there is no surviving brother, the youngest surviving sister will inherit. If she had left surviving son or daughter, the son will inherit. If she had a surviving daughter but no son, the surviving daughter will inherit. Provided that son is not paid.

(12) If there is 'Falak' in the family, he/she will have a right to have a share of

the mother's property.

12. Apparent that the property left behind by the deceased father will be inherited by the sons and the surviving wife of the head of the family equally. In the present case, settlement was arrived between the surviving sons including the father of the respondent, on the basis of which the application for Heirship Certificate was applied. It appears that the respondent is the only surviving son of the grandfather of the petitioner. It further appears that the father of the petitioner has in the meantime expired.

13. Pertinent at this junction to refer to the application filed by the petitioner before the Trial Court for review of the Order dated 28.11.2019. The grounds for review as stated in paragraph No. 10 is reproduced hereunder for ready reference:-

"I. For that Order and issuance of Heirship Certificate No. 2230 of 2019 dt.28.11.2019 suffers from inherent defect and is palpably wrong on the face of it, which Your Honour may like to review with a view to advancing the cause of Justice.

II. For that the court has made a grave mistake in relying on the statement of the Opposite Party while passing Order and issuance of Heirship Certificate No. 2230 of 2019 dt.28.11.2019 resulting in miscarriage of justice.

III. For that the Order dt.28.11.2011 and issuance of Heirship Certificate No. 2230 of 2019 dt.28.11.2019 is liable to be reviewed since the Petitioners are knowingly excluded in the application who were the Respondents in the previous Heirship Application.

IV. For that the Opposite Party has concealed the fact that the previous Heirship application submitted by the Respondent was withdrawn with liberty to file afresh wherein the present Petitioners were the Opposite Parties, at the time of applying that the impugned Order.

V. For that the Opposite party/Applicant failed to value the suit.

VI. For that the Heirship Certificate was issued without issuing any notice and without publishing in any Local News Paper.

VII. For that the Respondent applied for issuance of Heirship Certificate in violation Order Dt. 9.9.2019 passed in Heirship Certificate No. 740 of 2017. Moreover, the Respondent failed to disclosed the same.

VIII. For that otherwise in the interest of justice the order is liable to be reviewed."

14. It is well settled law that a party is not entitled to seek a review of a judgment delivered by the Court merely for the purpose of a rehearing and a fresh decision of a case. The Court shall reopen its judgment only if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice.

15. In a civil proceeding, an application for review is entertained only on the ground mentioned in Order 47 Rule 1 of the CPC. Order 47 Rule 1 of CPC is extracted hereunder for ready reference:-

**“ORDER XL VII
REVIEW**

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.*

(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.]”

16. Thus, the power of review can be exercised only for correction of a mistake but not to substitute a view. Such mistake must be apparent on the

face of the record. Reference is made in this regard to the decision of the Apex Court in the case of *Lily Thomas And Others Vs. Union of India and Others*, reported in (2000) 6 SCC 224. Paragraph Nos. 52 to 56 of the said judgment is reproduced hereunder for ready reference:-

“52. The dictionary meaning of the word "review" is "the act of looking; offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in *Patel Narshi Thakersh and Ors. v. Pradyunmarsinghji Arjunsinghji* held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of Justice. Law has to bend before Justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in *S. Nagaraj and Ors etc. v. State of Karnataka and Anr. etc.* 1993 Supp.(4) SCC 595 held:

‘19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Law Choudhury v. Sukhraj*

Rai the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in Rajunder Narain Rae v. Bijai Govind Singh (1836) 1 Moo PC 117 that an order made by the Court was final and could not be altered:

‘...nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common Law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in....The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.’

Basis for exercise of the power was stated in the same decision as under:

‘It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by [Article 137](#) of the Constitution. Our Constitution makers who had the practical wisdom to visualise the efficacy of such provision

expressly conferred the substantive power to review any judgment or order by [Article 137](#) of the Constitution. And Clause (c) of [Article 145](#) permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XL VII Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.'

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.

53. This Court in [MJs Northern India Caterers \(India\) Ltd. v. Lt. Governor of Delhi](#) considered the powers of this Court under [Article 137](#) of the Constitution read with [Order 47 Rule 1 CPC](#) and Order 40 Rule 1 of the Supreme Court Rules and held:

‘8. It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. [Sajjan Singh v. State of Rajasthan](#) .

For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing. [G.L Gupta v. D.N. Mehta](#) . The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice ON Mohindroo v. Dist. Judge, Delhi. Power to review its judgments has been conferred on the Supreme Court by [Article 137](#) of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under [Article 145](#). In a civil proceeding, an application for review is entertained only on a ground mentioned in O. XLVII, [Rule 1 of the CPC](#) and in a criminal proceeding on the ground of an error apparent on the face of the record. (Order XL, R.1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility'. [Chandra Kanta v. Sheikh Habib](#) .

54. [Article 137](#) empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under [Article 145](#) of the Constitution. The Supreme Court. Rules made in exercise of the powers under [Article 145](#) of the Constitution prescribe that in civil cases, review lies on any of the ground specified in [Order 47 Rule 1 of the CPC](#) which provides:

‘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 of 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 of order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.'*

Under Order 40 Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases. Order 40 Rule 5 of the Supreme Court Rules provides that after an application for review has been disposed of no further application shall be entertained in the same matter.

55. In [A.R. Antulay's](#) case (supra) this Court held that the principle of English Law that the size of the Bench did not matter has not been accepted in this country. In this country there is a hierarchy within the Court itself where larger Benches overrule smaller Benches. This practice followed by the Court was declared to have been crystalised as a rule of law. Reference in that behalf was made to the judgments in [Javed Ahmed Abdttl Hamid Pawala v. State of Maharashtra](#) , [State of Orissa v. Titaghur Paper Mills](#) , [Union of India v. Godfrey Philips India Ltd.](#) 1985 Supp. (3) SCR 123. In that case the Bench comprising seven judges was called upon to decide as to whether the directions given by the Bench of this Court comprising five judges in the case of [R.S. Nayak v. A.R. Antulay](#) were legally proper or not and whether the action and the trial proceedings pursuant to those directions were legal and valid. In that behalf reference was made to the hierarchy of Benches and practice prevalent in the country. It was observed that Court was not debarred from reopening the

question of giving proper directions and correcting the error in appeal if the direction issued in the earlier case on 16th February, 1984 were found to be violative of limits of jurisdiction and that those directions had resulted in deprivation of fundamental rights of a citizen granted by [Articles 14 and 21](#) of the Constitution of India. The Court referred to its earlier judgment in [Prem Chand Garg v. Excise Commissioner U.P. Allahabad](#) , [Naresh Shridhar Mirajkar v. State of Maharashtra](#) . [Smt. Ujjam Bai v. State of U.P.](#) and concluded that the citizens should not suffer on account of directions of the Court based upon error leading to conferment of jurisdiction. The directions issued by the Court were found on facts to be violative of the limits of jurisdiction resulting in the deprivation of the fundamental rights guaranteed to the appellant therein. It was further found that the impugned directions had been issued without observing the principle of audi alteram partem.

56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under [Article 136](#) or [Article 32](#) of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment."

17. Perusal of the impugned Order dated 29.11.2023 appears that the Trial Court having not found any error apparent on the face of the record, rejected the prayer for review.

18. Reading of the grounds of review in the present case, it appears that the petitioner is seeking a rehearing in the ambit of a review. Infact, there appears no error apparent in the Order dated 28.11.2019 on the face of the record and as such, no case for review is made out by the petitioner.

19. Therefore, the said approach of the Trial Court appears to be in conformity with the powers of review, as provided under Order 47 Rule 1.

20. In view of the above, this Court finds no infirmity or illegality in the Order dated 29.11.2023 passed by the learned Senior Judge-III, Aizawl District, Aizawl. As such, the instant Revision Petition has no merit whatsoever.

21. Accordingly, the Revision Petition stands dismissed.

22. No cost.

JUDGE

Comparing Assistant