

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

...

RP no.07/2024

Pronounced on: 03.01.2025

Mohd. Farooq

.....Petitioner(s)

Through: Mr R. Koul, Advocate

Versus

Abdul Lateef and another

.....Respondent(s)

Through:

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Review of the Order/judgement dated 28th December 2023, passed by this Court in MA no.459/2012 titled as *Mohd Farooq v. Abdul Latif Bhagwan and another*, is sought by appellant/review petitioner on the grounds made mention of in the instant petition.
2. I have heard counsel for petitioner and considered the matter.
3. Learned counsel for petitioner would contend that it was the case of petitioner/appellant that he purchased land measuring 1 ½ marla falling under Khasra no.2198 min situate at Village Kishtwar from respondent no.2 vide sale deed 23rd October 2007 and raised construction therein. The said sale deed was questioned by respondent no.1 before the court of Sub Judge, Kishtwar, claiming right under Right of Prior Purchase Act, alleging to be co-sharer of respondent

no.2. The suit was resisted. The Trial Court dismissed the suit. Appeal was preferred by respondent no.1, which was allowed setting-aside Trial Court judgement and remanding matter back for fresh adjudication. Learned counsel for review petitioner also avers that the sole issue raised in the appeal and proceedings below rested on certified copies of sale deeds which were placed on record of Trial Court to exhibit four different sale deeds by different vendors in same khasra numbers to different persons. Reference has been made by him to judgement dated 20th September 2023 passed by the Supreme Court in Civil Appeal no.14630/2015 titled as *Appaiya v. Andimuthu*, in which it was said that certified copies of sale deeds can be taken into consideration as proof of the sales without any other formal evidence and that the said judgement also applies to the case in hand.

4. It is pertinent to mention here that while considering abovementioned contentions, the scope and ambit of Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure is to be taken into consideration.
5. The grounds on which review can be sought are enumerated in Order XLVII Rule 1 CPC, which reads as under:

“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.”

6. An application for review would lie, *among others*, when an order suffers from an error apparent on the face of record and permitting the same to continue would lead to failure of justice. Limitations on exercise of power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In absence of any such error, finality attached to the judgment/order cannot be disturbed.
7. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake.
8. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.
9. Nevertheless, in view of contentions of counsel for review petitioner, it would be appropriate to first reproduce impugned judgement here:

1. The instant petition has been filed by the appellant against the order dated 03.11.2012 passed by the learned District Judge, Kishtwar in File

No.38/Civil Appeal, whereby order dated 21.05.2011 passed by the learned Sub-Judge, Kishtwar has been set aside.

2. The order dated 03.11.2012 is being challenged in this petition precisely, on the grounds that the finding of the Appellate Court is contrary to the material brought on record and the findings that the issue could not be treated as a preliminary objection is bereft of any legal support; that the Sale Deeds could be taken into consideration as has been rightly done by the trial Court without its formal proof, since no challenge was made against its execution by the respondent No. 1; that the very object of Right of Prior Purchase Act was nullified in the present case, since co-sharers had already inducted strangers to the land in question to which no objection was ever raised by respondent No. 1 and thus he was not entitled to seek partial preemption and the suit was rightly dismissed by the trial Court.
3. Briefly stating the case of the appellant –Mohd Farooq is that he purchased land measuring 1 ½ Marlas falling in Khasra No. 2198 min situated at Village Kishtwar from Gulam Mohd-respondent No. 2 and a Sale Deed was executed and registered on 23.10.2007. The respondent No.1 Abdul Latif Bhagwan challenged the said Sale Deed before the Court of learned Sub-Judge, Kishtwar under the Right of Prior Purchase Act on the ground that he along with respondent No. 2 is a co-sharer. The appellant/defendant resisted the suit and took a ground that there had been Sale Deeds already executed between the different persons in the land in question by other co-sharers thus, petitioner/respondent No. 1 cannot claim any right under the Right of Prior Purchase Act because he has not challenged the aforesaid Sale Deeds.
4. The trial Court after framing the issues passed an order dated 21.05.2011 by holding that plaintiff/respondent No. 1 was debarred from seeking a partial preemption. The trial Court had relied upon the Sale Deeds executed prior to the Sale Deed dated 23.10.2007 executed by (1) Ghulam Mohd in favour of Shah Nawaz and others vide Sale Deed dated 20.08.1998 (2) Mohd Saban in favour of Lases vide Sale Deed dated 23.08.2004 (3) Mushtaq Ahmed in favour of Rukhsana Begum vide Sale Deed dated 09.07.1999 and (4) Mushtaq Ahmed in favour of Bahar Firdous. The trial Court without seeking proof of the aforesaid documents, dismissed the suit of the plaintiff/respondent No. 1 on the basis of the certified copies of the Sale Deeds by holding that he is debarred from seeking a partial preemption. The ground on which the plaintiff/respondent no. 1 has been held to be not entitled to seek partial preemption was that the land out of the same khasra number even same khewat number had already been alienated vide different Sale Deeds and the plaintiff/respondent no. 1 has sought to exercise his right of preemption with regard to those transactions, therefore, the suit was hit by doctrine of partial preemption.
5. The question before the trial Court which was involved was mixed question of fact as well as law. The trial Court had relied upon the certified copies of the Sale Deeds without contents of the said Sale Deeds being proved by adducing evidence, the documents and contents of which are to be proved either by primary or secondary evidence and merely filing of documents more particularly copies of the same does not prove the transaction unless admitted by the other side. The execution of the said Sale Deeds were thus yet to be proved, but the trial Court while relying upon the aforesaid Sale Deeds and without there

being any proof vide order dated 21.5.2011 has dismissed the suit of the plaintiff/respondent no. 1.

- 6. The order dated 21.05.2011 was challenged by the plaintiff/respondent No. 1 before the Court of learned District Judge, Kishtwar. The Appellate Court after hearing learned counsel for the parties and going through the record has rightly held that the trial Court has fallen in error while relying upon the Sale Deeds without the said documents having been proved, thus, committed error, therefore, has rightly remanded the matter back to the trial Court.*
- 7. The above discussion makes it clear that the trial Court has dismissed the suit of the plaintiff/respondent No. 1 without there being any proof with regard to the documents relied upon by the defendants, even no evidence was recorded to prove the contents of the said documents. As such, Appellate Court has rightly remanded back the matter to the trial Court for passing fresh order after hearing both the parties.*
- 8. In view of the above, I do not find any merit in the instant appeal. The impugned order dated 03.11.2012 passed by the Appellate Court is well reasoned and the same is upheld.*
- 9. The instant appeal is, accordingly, dismissed.*

10. In explicit terms it has been engraved in the judgement by this Court that the order dated 21.05.2011 was challenged by plaintiff/respondent No.1 before the Court of learned District Judge, Kishtwar and that Appellate Court after hearing learned counsel for parties and going through the record has rightly held that Trial Court has fallen in error while relying upon Sale Deeds without the said documents having been proved, thus, committed error, therefore, has rightly remanded the matter back to the Trial Court. While passing the judgement under review, it has also been observed by this Court that the Appellate Court has remanded the matter back to the Trial Court and, as such, review petitioner's right, or for that matter right of other-side, has not been closed. In that view of matter this Court has dealt with all facets of the matter in its entirety.

11. The Supreme Court in *Haridas Das v. Usha Rani Banik (Smt.) and Others, (2006) 4 SCC 78*, while considering the scope and ambit of

Section 114 CPC read with Order 47 Rule 1 CPC observed and held as under:

“14. In *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170 it was held that:

“8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution, this Court, in *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, (1979) 4 SCC 389 speaking through Chinnappa Reddy, J. has made the following pertinent observations:

‘It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. 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.’

15. A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.”

12. 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. An error that 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 justifying the court to exercise its power of review under Order

XLVII Rule 1 CPC. In exercise of jurisdiction under Order XLVII Rule 1 CPC, it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered, has a limited purpose and cannot be allowed to be 'an appeal in disguise'. [Vide: *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, AIR 1979 SC 1047; *Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale*, AIR 1960 SC 137, and *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715].

13. Again, the Supreme Court in *Lily Thomas v. Union of India*, (2000) 6 SC 224, held that power of review could be exercised to correct a mistake but not to substitute a view. Such powers could be exercised within limits of statute dealing with exercise of power. It was further observed that the words "any other sufficient reason" appearing in Order XLVII Rule 1 CPC must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in *Chhajju Ram v. Neki*, AIR 1922 PC 112 and *Moran Mar Basselios Catholicos v. Most Rev. Mar Poullose Athanasius*, AIR 1954 SC 526.
14. Section 114, CPC, provides for a substantive power of review by a civil court and consequently by appellate courts. Section 114 envisions:

"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,
- (c) by a decision on a reference from a Court of Small cause, 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."

15. The words “subject as aforesaid” occurring in Section 114 of the Code mean subject to such conditions and limitations as may be prescribed as appearing in Section 113 thereof and for the said purpose, the procedural conditions contained in Order XLVII of the Code must be taken into consideration. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order XLVII Rule 1 CPC.
16. 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 statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. It cannot be denied that the review is the creation of a statute. In the case of *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji*, (1971) 3 SCC 844, the Supreme Court has held that 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 is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel for review petitioner was unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated. The term “*mistake or error apparent*” by its very implication indicates an error which is evident *per se* from the record of the case and does not

require detailed examination, scrutiny and elucidation either of facts or legal position. If an error is not obvious and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC. To put it differently, an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court on a point of fact or law. In any case, while exercising the power of review, the court cannot sit in appeal over its judgment/ decision.

17. The Supreme Court in *Ram Sahu (Dead) through LRs and others v. Vinod Kumar Rawat and others*, 2020 SCC OnLine SC 896, after discussing a number of judgements on the theme of review, has held that an application for review is more restricted than that of an appeal and the Court of review has limited jurisdiction as to the definite limit mentioned in Order XLVII Rule 1 CPC itself. The power of review cannot be exercised as an inherent power nor can an appellate power be exercised in the guise of power of review. After holding this, the Supreme court found that High Court overstepped jurisdiction vested in the Court under Order XLVII Rule 1 CPC.
18. Again, the Supreme Court in *S. Murali Sundaram v. Jothibai Kannan*, (2023) SCC OnLine SC 185, relied upon *Perry Kansagra v. Smriti Madan Kansagra*, (2019) 20 SCC 753, to state that while exercising review jurisdiction, the Review Court does not sit in an appeal over its own order. It was observed that a rehearing of the matter was impermissible in law and the same cannot be considered as an appeal in disguise. It was further clarified that the power of review

can be exercised for correction of a mistake but not to substitute a view, thus, the same was wholly unjustified to rewrite a judgement by which the controversy had already been decided. The Supreme Court stated that the Madras High Court had exceeded its review jurisdiction while deciding the review application which is wholly impermissible.

19. In the backdrop of above well-settled legal position, all that has been argued by counsel for applicant/review petitioner and/or mentioned in the instant review petition, is that this Court should reopen the findings recorded in the judgement, review of which is sought. It is made clear here that review jurisdiction cannot be used for that purpose. This is not the scope of Section 114 read with Order XLVII Rule 1 CPC. After having an overall view of the grounds taken in the application and submissions made by learned counsel for review petitioner, there is no error apparent on the face of record warranting review of the judgement dated 28th December 2023. In such circumstances, the instant review petition is liable to be dismissed.
20. For the reasons discussed above, I do not find any merit in this petition seeking review of judgement dated 28th December 2023, and the same is, accordingly, **dismissed**.

(Vinod Chatterji Koul)
Judge

Jammu

03.01.2025

Ajaz Ahmad, Secy.

Whether approved for reporting? Yes