

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

*Case No:- RP No. 87/2023 in
CSA No. 3/2010*

*Date of Pronouncement:- 31.10.2025
Uploaded on:- 10.11.2025*

Balak Ram

.... Petitioner(s)

Through: Mr. Kuldeep Raj, Advocate
Mr. Vikas Sharma, Advocate

Vs

Shakuntla Devi and Ors.

..... Respondent(s)

Through: Mr. Abhishek Wazir, Advocate
Mr. Razat sudan, Advocate

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER(ORAL)

1. The petitioner herein seeks review of the judgment and order dated 30.05.2023 passed in case titled as "***Balak Ram Vs. Shakuntla Devi and Ors.***", in terms whereof, the civil 2nd appeal of the petitioners came to be dismissed.
2. Before advertng to the review petition in hand, it is significant to mention here that the petitioner herein have had preferred a Civil Second Appeal being CSA No. 03/2010, challenging therein judgment and decree dated 18.11.2009 passed by the Additional District Judge, Jammu in an appeal titled as, "***Shakuntla Devi and Ors. Vs. Balak Ram***", which appeal have had been filed by the respondents herein against the judgment and decree

dated 10.03.2004 passed by the Court of 3rd Additional Munsiff, Jammu in favour of the plaintiff/petitioner herein and against the defendants/respondents herein, whereafter aggrieved of the said judgment and decree dated 10.03.2004, the defendants/respondents herein preferred an appeal before the Appellate Court on 02.04.2004 which appeal came to be decided on 11.12.2008 and being aggrieved of the dismissal of the said appeal, a Civil Second Appeal came to be preferred by the defendants/respondents herein before this Court being Civil Second appeal No. 03/2009, which came to be decided by this Court on 16.07.2009 with the consensus of the appearing counsel for the parties and while setting aside the said judgment and decree, the case was remanded back to the appellate Court again for re-consideration of the said appeal, whereafter the appellate Court again in terms of judgment and decree dated 18.11.2009, reversed the judgment and decree of the trial Court dated 10.03.2004 and dismissed the suit of the plaintiff/petitioner herein, holding that the plaintiff/petitioner herein has failed to prove to be the owner of the land measuring 3 Marlas covered survey 21/Min situated at Bahu Fort, Jammu, whereafter the plaintiff/petitioner herein preferred the Civil Second appeal (supra), which appeal came to be dismissed by this Court on 30.05.2023, against which judgment and order, the instant review petition has been filed.

3. The petitioner herein in the instant review petition has contended that this Court has made observations contrary to the record while passing the judgment and order under review, as the record available on the file

suggested that house and vacant appurtenant land measuring 9000 sq. ft. had been purchased by Lakhu, the grandfather of the plaintiff/petitioner herein in court auction. which property consequently vested unto the petitioner herein through succession and the said land comprised of Khasra Nos. 18 to 21 situated at village Bahu Jammu and though Khasra No. 21 initially comprised of 18 Marlas upto the year 1969 being in possession of the petitioner herein, yet the said khasra number got portioned into two parts, whereby 15 Marlas continued to be remained under Khasra No. 21 under the occupation of the petitioner herein, 3 Marlas got forcefully occupied by one Bal Krishan, the predecessor of the respondents herein, who raised the construction thereon and that this Court did not consider the documentary evidence on record in this regard, which non-consideration amounted to error apparent on the face of the record, leading to this Court to draw a wrong conclusion in respect of the said ownership of said land covered under Khasra No. 21.

It is also contended in the instant petition that the “Nishandehi report” being part of the record could not have been read in evidence by the appellate Court below, as there was no pleading in respect thereof and that the said “Nishandehi report” could not vest ownership right upon the respondents and since this Court overlooked the said facts as well, the review of the judgment and order got necessitated.

4. **Objections** to the instant review petition have been filed by the respondents 2 to 6, wherein it is being opposed, *inter-alia*, on the premise that the review petition is not maintainable, as the petitioner under the

cover of review seeks re-adjudication of the factual aspects of the case adjudicated upon by the appellate Court as well as this Court and that the power of review is to be exercised only on the ground of discovery of new and important matter or evidence or on account of mistake or error apparent on the face of the record, inasmuch as on any other sufficient reasons and that the petitioner has failed to demonstrate that any of grounds, warranting review exists entitling the petitioner to seek review of the judgment and order in question.

Heard, considered and perused the record.

5. Before proceeding further in the matter, it would be appropriate to refer hereunder to ambit and scope of the doctrine of review.
6. The normal rule of law is that once a judgment is pronounced or an order is made, the Court becomes *functus officio*, i.e., ceases to have control over the matter and the judgment or order pronounced and made becomes final and cannot be altered, modified, varied or changed, however, the review of a judgment or order is an exception to this general rule and the doctrine can be invoked and allowed in certain circumstances and on certain grounds only.

A right of review, in law, has been held to be both substantive and procedural and as a matter of procedure, every Court can correct an inadvertent or unintentional error, which has crept in the judgment or order either due to the procedural defect or mathematical and clerical error or by misrepresentation or fraud of a party to the proceedings, however,

the power of review vested in a Court is not inherent power and has to be conferred on a Court either expressly or by necessary implication.

7. A reference herein to the following judgments of the Apex Court pertaining to the review would be relevant.

In *“Inder chand Jain Vs. Motilal*, reported in 2009 (14) SCC 663”, following has been provided by the Apex Court:-

“(7).Section 114 of the Code of Civil Procedure (for short "the Code") provides for a substantive power of review by a Civil Court and consequently by the appellate courts. The words "subject as aforesaid" occurring in Section 114 of the Code means 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 47 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 47 of the Code; Rule 1 whereof reads as under:

"17. The power of a civil court to review its judgment/decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in Order 47 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 to the court which passed the decree or made the order.”

In “*Lily Thomas Vs. Union of India*, reported in 2000(6) SCC 224”, following has been laid down:-

“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.”

In “*Shri Ram Sahu (Dead) through LRs and others vs. Vinod Kumar Rawar*, reported in 2020 Online SC 896”, following has been noticed and held:-

“33. In the case of State of West Bengal and Others vs. Kamal Sengupta and Anr., (2008) 8 SCC 612, this Court had an occasion to consider what can be said to be “mistake or error apparent on the face of record”. In para 22 to 35 it is observed and held as under:

“22. The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self evident 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 or Section 22(3)(f) of the Act. 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/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.

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. .*

26. In Moran Mar Basselios Catholicos v. Mar Poulose Athanasius (supra) this Court interpreted the provisions contained in the Travancore Code of Civil Procedure which are analogous to Order 47 Rule 1 and observed:

“32. ... Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein.

It may allow a review on three specified grounds, namely,

- (i) *discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason.*

It has been held by the Judicial Committee that the words 'any other sufficient reason' must mean 'a reason sufficient on grounds, least analogous to those specified in the rule'."

27. *In Thungabhadra Industries Ltd. v. Govt. of A.P. (supra) it was held that a review is by no means an appeal in disguise whereof an erroneous decision can be corrected.*

28. *In Parsion Devi v. Sumitri Devi (Supra) it was held as under: (SCC p. 716) "Under Order 47 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 under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. 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. A review petition has a limited purpose and cannot be allowed to be 'an appeal in disguise'."*

34. *To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC, which has been elaborately discussed hereinabove. 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 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power can be exercised in the guise of power of review."*

8. Keeping in mind the aforesaid position and principles of law and reverting back to the case in hand, the petitioner herein admittedly seeks review of the judgment and order on the grounds noticed in the preceding paras, a closer examination of which grounds, as also the record available on file would reveals that the petitioner, in essence, seeks re-adjudication of the controversy settled on merits by this Court, which re-adjudication in law is not permissible. The allegation of mis-appreciation of the evidence by this Court qua survey No. 21 and drawing of wrong conclusions inasmuch as the wrong reliance placed by the appellate Court on the “Nishandehi report” pertaining to said Khasra No. 21 cannot be re-agitated by the petitioner herein under the guise of the review petition, in that, the said plea urged by the petitioner amounts to re-appreciation of evidence and re-consideration of the controversy under the guise of review petition.
9. Viewed thus, for what has been observed, considered and analyzed hereinabove, the instant review petition is found to be without any merit and is, accordingly, *dismissed* along with connected applications, if any.

(Javed Iqbal Wani)
Judge

Jammu
31.10.2025
Javid Iqbal

Whether the judgment is speaking? Yes/No
Whether the judgment is reportable? Yes/No