

A.F.R.

Judgment reserved on 02.09.2024
Judgement delivered on 06.03.2025

Court No. - 68

Case :- WRIT - B No. - 2668 of 2024

Petitioner :- Pooran

Respondent :- State Of Up And 8 Others

Counsel for Petitioner :- Anshu Chaudhary, Sunil Verma

Counsel for Respondent :- C.S.C., Deepak Gaur, Shantanu, Vikram Singh Shrivastava

Hon'ble Ashutosh Srivastava, J.

1. Heard Shri Anshu Chaudhary, learned counsel for the petitioner, Shri Shantanu, learned counsel for the respondent no. 4, Shri H.K. Shukla, learned standing Counsel for the State respondents and Shri Deepak Gaur, learned counsel, who has accepted notice on behalf of the respondent nos. 6 and 7 the Gram Panchayats, concerned.

2. The instant writ petition has been filed questioning the order dated 14.05.2024, passed by the Board of Revenue U.P. at Prayagraj in a Review registered as Case No. REV/3878/2023 (Ram Deen vs. Pooran and others), whereby and whereunder the Review has been allowed and the order dated 30.06.2023 passed in Second Appeal No. 1207 of 2021 under section 208 of the U.P. Revenue Code, 2006 as also the orders passed by the Commissioner, Jhansi Division Jhansi, dated 26.03.2021 in First Appeal under Section 207 of U.P. Revenue Code, 2006 and order dated 09.10.2017 passed by the Sub Divisional Officer, Pali District-Lalitpur in proceedings under section 229-B of the UPZA & LR Act have been set aside and the matter has been remitted back to the Court of the Sub Divisional Magistrate to decide the proceedings afresh after affording opportunity of hearing to all concerned within three months.

3. Learned counsel for the parties are in agreement that the respondent nos. 8 and 9 are proforma respondents and notices need not be issued to them and that the respondent no. 4 alone is the only contesting respondent. The writ petition raises legal issues and may be decided without calling for a counter affidavit.

4. The facts shorn of unnecessary details giving rise to the present proceedings are that the petitioner along with the Proforma respondents

initiated proceedings under Section 229-B of the U.P.Z.A. & L.R. Act, registered as Case no. 242 of 1999-2000 seeking the declaration of their co-sharer rights to the extent of 1/2 share in Arazi No. 320/1M/0.372, Arazi No. 1023M/0.482 total area 0.852 Hectares situated in Village Pali and Arazi No. 335/0.101, 336/0.733, 337/1.749, 338/1.360, 337/0.101, 338/0.041 and 339/1/0.202 total seven plots area 4.899 Hectares situate in village Bhaunta. It was averred in the plaint of the aforesaid case that the aforesaid plots are joint family property belonging to common ancestor Ghasite. A pedigree has been depicted in para 4 of the writ petition to show the respective relationship of the parties. The suit under Section 229-B was filed to declare 1/2 share in the plots. The proceedings were contested by Ram Deen the respondent no. 4 herein. The Sub Divisional Magistrate vide order dated 09.10.2017 decreed the suit for 1/2 share in the plots in the aforesaid two villages. Aggrieved Ram Deen filed Appeal before the Commissioner, Jhansi Mandal under Section 207 of the U.P. Revenue Code, 2006. The Appeal was dismissed vide order dated 26.05.2021. Thereafter Ram Deen filed Second Appeal under Section 208 of the U.P. Revenue Code, 2006, before the Board of Revenue being Second Appeal No. 1207 of 2021, which too dismissed the Second Appeal upholding the judgment and orders of the learned Commissioner and Sub Divisional Officer. Thereafter the respondent no. 4 Ram Deen preferred a Review before the Board of Revenue which was registered as Case No. REV/3878/2023. The Review has been allowed by the impugned order dated 14.05.2024.

5. Learned counsel for the writ petitioner has vehemently argued that the order dated 14.05.2024 passed by the Board of Revenue reviewing its earlier order dismissing the Second Appeal and thereby upholding the orders of the Commissioner and Sub Divisional Magistrate is patently illegal and deserves to be set aside by this Court in exercise of its extra ordinary powers under Article 226 of the Constitution of India. In the wake of the findings of facts recorded by the Authorities Below that the property in dispute was joint property and no partition had taken place and further that Ram Deen, the contesting respondent, had failed to lead evidence that the property was self acquired property of his father Bihari it was not incumbent upon the Board of Revenue to review its own order. Reliance has been placed upon a decision of the Apex Court in the case of Sanjay Kumar Agarwal vs. state Tax Officer reported in 2023 (o) Supreme (SC) 1098 to buttress the point that Review jurisdiction shall be exercised sparingly and in special circumstances.

6. Per contra, Shri Shantanu learned counsel for the contesting respondent no. 4 submits that the Board of Revenue while reviewing its earlier order under the impugned order has recorded adequate reasons which do not call for any interference by this Court in exercise of its extra ordinary powers under Article 226 of the Constitution of India. Besides the Board of Revenue under the impugned order has merely remanded the matter back for reconsideration within a stipulated time. It is accordingly prayed that the writ petition be dismissed.

7. I, have heard the learned counsel for the parties and have perused the records. On the perusal of the records and particularly the order of the learned Sub Divisional Magistrate dated 09.10.2017 I find that issues no. 1, 2 and 3 were struck between the parties as to whether the plaintiff along with the defendant nos. 1 and 2 were co-sharers, whether the disputed plots were acquired jointly by the parties and what is the share of the parties. The learned Sub Divisional Magistrate after appreciation of the materials on record returned a finding that the property was joint, there had been no partition and was recorded in the name of Bihari father of contesting respondent no. 4 in the capacity of being the eldest son of Ghasite the common ancestor and that the property was not the self acquired property of Bihari and the plaintiff had 1/2 share in it. In Appeal preferred by the respondent no. 4 the learned Commissioner found that the property in dispute was existing prior to 1347 Fasli and also upheld the findings of the learned Sub Divisional Magistrate further recording the finding that no evidence could be led by the appellant/ respondent no. 4 to establish that the property was the self acquired property of his father Bihari. The Board of Revenue in Second Appeal preferred against the order of the learned Commissioner also upheld the findings of facts and dismissed the Second Appeal vide order dated 30.06.2023. A perusal of the impugned order dated 14.05.2024 reveals that the Board of Revenue u'nder the impugned order has proceeded to decide the same as if hearing the Second Appeal afresh which is not permitted under the law.

8. In the opinion of the Court a party is not entitled to seek a review of a judgment delivered merely for the purpose of rehearing and a fresh decision in the case. 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 and Section 114 of CPC. A perusal of the provisions contained in Order 47 Rule 1 CPC 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 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 for any other sufficient reason.

9. The Apex Court in the case of ***Meera Bhanja vs. Nirmala Kumar Choudhary reported in 1995 (1) SCC 170*** held as under:

"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."

10. In ***Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma, AIR 1979 SC 1047***, the Apex Court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under: "It is true as observed by this Court in ***Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909*** there is nothing in Article 226 of the Constitution to preclude a 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 powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

11. The judgment in Aribam case was followed in Meera Bhanja (supra). In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any longdrawn process of reasoning. The following

observations in connection with an error apparent on the face of the record in *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa tirumale*, AIR 1960 SC 137 were also noted:

“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. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.”

12. It is also pertinent to mention the observations of this Court in *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715. Relying upon the judgments in *Aribam* and *Meera Bhanja* it was observed as under:

“9. 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’. A review petition, it must be remembered has a limited purpose and cannot be allowed to be ‘an appeal in disguise’.”

13. In the case of *Lily Thomas vs. Union of India*, (2000) 6 SC 224, it was observed by the Apex Court that power of review could be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within limits of the Statutes dealing with the exercise of power. The words ‘any other sufficient reason’ appearing in Order 47 Rule 1 CPC must mean “a reason sufficient on grounds at least analogous to those specified in the rule.

14. In the case of *Parison Devi vs. Sumitri Devi (Supra)* in paragraph 7 to 9 it is observed and held as under:

“7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In *Thungabhadra Industries Ltd. v. Government of Andhra Pradesh*, AIR 1964 SC 1372 this Court opined:

"What however, we are not concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law in an 'error apparent on the face of the record'. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.

8. Again, in *Meera Bhaja vs. Nirmala Kumari choudhury*, 1995 1 SCC 170 while quoting with approval a passage from *Aribam tuleshwar sharma vs. Aribam Pishak Sharma (supra)* this Court once again held that 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.

9. 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 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 to 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". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

8.2 In the case of State of *West Bengal and others vs. Kamal Sengupta and Another*, (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 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 of law. In any case, while exercising the power of review, the court/ tribunal concerned cannot sit in appeal over its judgment/ decision.

15. In ***Gopal Singh v. State Cadre Forest Officers Association, 2007 9 SCC 369*** the Apex Court held that after rejecting the original application filed by the appellant, there was no justification for the Tribunal to review its order and allow the revision of the appellant. Some of the observations made in that judgment are extracted below:

“40. The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Sinha, J.) that the Tribunal has travelled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect.”

16. Recently the Apex Court in ***Sanjay Kumar Agarwal vs. State Tax Officer (Supra)*** relied upon heavily by learned counsel for the petitioner. After considering various decisions rendered by it on the question of exercise of review jurisdiction has culled out the gist of the decisions as under :

17. The gist of the afore-stated decisions is that: -

(i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

(ii) 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.

(iii) 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 justifying the court to exercise its power of review.

(iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be “reheard and corrected.”

(v) A Review Petition has a limited purpose and cannot be allowed to be “an appeal in disguise.”

(vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

(vii) 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.

(viii) Even the change in law or subsequent decision/ judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.

18. In view of the above this Court is of the considered opinion that the Board of Revenue committed grave error in allowing the review application and setting aside its own order as if sitting over it as an appellate authority without recording any error apparent on the face of record. The findings of fact recorded by the Revenue Authorities including the Board of Revenue after appraisal of the evidence on record was not liable to be disturbed in the absence of any of the grounds made out for Review. Consequently, the impugned order dated 14.05.2024 passed by the Board of Revenue in review registered as Case No. REV/3878/2023 (Ram Deen vs. Pooran and others) is set aside. The writ petition stands *allowed*.

19. No order as to costs.

Order Date :- 06.03.2025

Deepak/