

Reserved on 20.05.2025

Delivered on 26.05.2025

In Chamber

Case :- CIVIL MISC REVIEW APPLICATION No. - 552 of 2024

Applicant :- Ganga Nagar Sahkari Awas Samiti Ltd

Opposite Party :- Smt. Patrana (Deceased) And 5 Others

Counsel for Applicant :- Shreyas Srivastava

Counsel for Opposite Party :- Syed Mohd. Fazal, Vivek Saran

Hon'ble Kshitij Shailendra,J.

1. Heard Shri Shreyas Srivastava, learned counsel for the applicant in review and Shri Vivek Saran, learned counsel for the respondents.

2. This application has been filed under Section 114 read with Order XLVII Rule 1 CPC praying for review of the judgment and order dated 10.09.2024 whereby I had allowed the Second Appeal No. 750 of 2001 on merits in open Court after hearing learned counsel for the parties .

3. Review has been sought mainly on the ground that as far as the relationship between Badlu and Dulari is concerned, the same was well established on record by cogent evidence led before the civil court and they being husband and wife, the suit was rightly abated on account of non-substitution of legal representatives of deceased Badlu but this Court has not properly appreciated evidence on record in this regard.

4. Submission is that when a dispute arose before the civil

court as regards legal representation after death of Badlu, the court passed an order dated 26.08.1998 in exercise of powers under Order XXII Rule 5 CPC and once determination was made that Dulari was wife of Badlu, no contrary view could be taken by this Court. It is also urged that this Court treated the criminal proceedings as irrelevant qua the relationship between Badlu and Dulari, whereas the judgment of the civil court dismissing the suit as abated had considered the evidence led before the civil court itself and, therefore, there is an error apparent on the face of the record.

5. It is further urged that in the judgment allowing second appeal, this Court has recorded a perverse finding as regards declaration of acquisition proceedings as null and void by the High Court, whereas the determination made by the High Court was qua non-award of solatium and the acquisition was not declared as null and void and when the suit would proceed after remand, the said erroneous finding would be binding upon the trial court and, consequently, the applicant in review would suffer.

6. It has also been argued that considering the nature of relief claimed in the suit, the joint-ness of cause of action stood reflected and, hence, on account of death of one of the several plaintiffs and for want of substitution of his legal representatives, the entire suit would abate and has rightly been declared as abated by the civil court as upheld by the first appellate court. In support of his submissions, learned counsel for the applicant has placed reliance upon following authorities:-

“(i) Municipal Council, Mandsaur Vs. Fakirchand and others: (1997) 3 SCC 500;

(ii) Hemareddi (D) through L.Rs. Vs. Ramachandra Yallappa Hosmani and others: (2019) 6 SCC 756.

7. Per contra, learned counsel for the respondents submits that the judgment deciding second appeal is a well considered and detailed judgment pronounced in open Court after hearing counsel for the parties and plea sought to be raised by the review applicant is essentially an attempt to re-argue the matter on merits, which is not permissible. It is also urged that whatever is the effect of judgment of the High Court in acquisition proceedings, the same would be seen by the trial court before whom the suit has been restored by this Court and, hence, the apprehension expressed by the applicant that any observation would affect the merits of the case of the parties, is unfounded.

8. On the parameters on which review can be sought, reliance has been placed upon judgment of Hon'ble Supreme Court in **Sanjay Kumar Agarwal and others Vs. State Tax Officer (1) and another: 2023 LawSuit (SC) 1083** and it is urged that 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.

9. Having heard learned counsel for the parties, I find that the limited question before this Court in the second appeal was as to whether, on account of death of Badlu pending suit and non-substitution of his alleged wife Dulari, the suit could abate. While deciding the appeal, the Court had interpreted the provisions of Order XXII Rules 2 and 3 CPC in the light of nature of suit proceedings. That is to say, as to whether, on account of death of one of several plaintiffs, right to sue would survive or not, depends on the nature of claim raised. Placing reliance upon the judgment of Hon'ble Supreme Court dated 11.10.2022 passed in **Civil Appeal No. 7145 of 2022 (Siravarapu Appa Rao & Ors. Vs, Dokala Appa Rao)** as well as another judgment in **Delhi Development**

Authority Vs. Diwan Chand Anand And Others (2022) 10 SCC 428 and the **State of Andhra Pradesh through Principal Secretary and others Vs. Pratap Karan and Others (2016) 2 SCC 82**, this Court found that despite death of one of the plaintiffs, suit would not abate and cause of action would remain alive for remaining plaintiffs.

10. The Court may record that the order dated 26.08.1998 passed by the trial court in purported exercise of powers under Order 22 Rule 5 CPC was not referred during the course of arguments in the second appeal. This could be a sufficient ground to reject the submission based thereon as a new point cannot be permitted to be argued under the garb of review proceedings, particularly when the point, despite being available to the applicant, was not argued; nevertheless this Court considered the submissions advanced. It finds that despite determination based upon relationship between Badlu and Dulari, either based upon criminal proceedings or the proceedings before the civil court itself, the same would have no impact on the proceedings. The reason being that neither the trial court nor the first appellate court carefully considered the nature of suit proceedings where non-substitution of alleged legal representative of one of the plaintiffs would not result in vanishing or elimination of cause of action or right to sue, in the light of authorities referred hereinabove.

11. Even otherwise, in order to arrive at a conclusive finding regarding marriage between Badlu and Dulari, there has to be a concrete evidence on record to establish the same, inasmuch as the root question involved in the present case, as regards legal representation of late Badlu, would revolve around valid marriage between these two persons. The Court finds from the record that except oral statements of some persons, there was no other

evidence to establish valid matrimonial relationship between Badlu and Dulari. Even one of the witnesses stated about illicit relationship in between the two and denied performance of marriage between them. In this background, even if the trial court determined the question of legal representation under Order XXII Rule 5 CPC or finally observed that Badlu and Dulari were married, the said finding not being based upon concrete and cogent evidence or material but simply based upon bare statements of third parties, would not be conclusive. Once the said question is highly disputed even before this Court, it would not be just and proper to uphold dismissal of suit as abated and, for this reason also, the Court is not inclined to uphold the finding regarding valid matrimonial relationship between Badlu and Dulari.

12. The court records that the suit was filed claiming two reliefs, one for declaration of title based upon plea of acquisition being null and void and the consequential relief was for injunction. Therefore, even if, by any stretch of imagination, it is observed that substitution of alleged legal representative of Badlu was not made, although this Court is not convinced about the status of Dulari as legally wedded wife in view of the statements of witnesses where they had alleged relationship between Badlu and Dulari as illicit and not that of husband and wife, cause of action to maintain the suit for declaration and injunction would survive to the remaining plaintiffs and, consequently, death of Badlu would not result in abatement of suit.

13. As far as judgment of Hon'ble Supreme Court in **Municipal Council (supra)** is concerned, the same had arisen from a simplicitor suit for permanent injunction and a plea of Karta of a joint hindu family was taken therein. The Hon'ble Supreme Court, in those facts, upheld the decision of the High Court dismissing the

suit as abated. In the instant case, declaration of ownership being covered by first relief claimed in the suit which was not there in the matter before the Supreme Court nor was there a serious dispute of legal representation, with due respect, the judgment in **Municipal Council (supra)** would not be read in favour of the applicant.

14. Hon'ble Supreme court in **Hemareddi (supra)** dealt with the proposition of joint/severable decree and held that when plaintiffs are found to have distinct, separate and independent right of their own and, for purpose of convenience or otherwise, they join together in a single litigation, the decree is to be viewed in substance as the combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree. The judgment would read in favour of the respondents and against the applicant as declaration of rights and consequential relief for injunction would constitute a decree of this very nature.

15. There is another feature of this case. By means of an application under Order XLI Rule 27 CPC and the supporting supplementary affidavit, it was sought to be brought on record that Badlu was murdered and Dulari was made an accused under Section 302 IPC for committing his murder. She was convicted under the judgment and order dated 12.03.2001 passed in S.T. No. 1678 of 1995, details whereof are mentioned in paragraphs no. 6 of supplementary affidavit accompanying the application, certified copy of the conviction order annexed thereto. In the same affidavit, plea of Section 25 of Hindu Succession Act was taken to the effect that the said provision disqualifies a person who commits murder or abetes commission of murder, from inheriting the property of the deceased. Although when this point was argued by Shri Vivek Saran, learned counsel, Shri Shreyas Srivastava vehemently opposed the submission by contending that when the suit had been

abated, conviction order had not been passed. However, he could not dispute the factum of conviction of Dulari.

16. Though the application under Order XLI Rule 27 CPC was rejected by this Court by order dated 11.02.2018 and, therefore, the conviction order cannot be treated on record of this appeal, however, considering the fact that this Court has ultimately remanded the matter to the trial court, further proceedings before the trial court would be held in accordance with law where the parties would have their say on all issues, particularly when the dispute regarding legal representation is very seriously involved in the matter, as discussed above.

17. As far as scope of review is concerned, the Supreme Court, in **S. Murali Sundaram vs. Jothibai Kannan and others, (2023) 13 SCC 515**, after placing reliance on **Perry Kansagra vs. Smriti Madan Kansagra (2019) 20 SCC 753**, observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit in appeal over its own order; a rehearing of the matter is impermissible in law; review is not appeal in disguise; 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 wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy has been finally decided. It was summed up 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 fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long

drawn 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*.”

18. In **Shanti Conductors (P) Ltd. vs. Assam SEB (2020) 2 SCC 677**, it was held that scope of review under Order 47 Rule 1 CPC read with Section 114 CPC is limited and under the guise of review, the petitioner cannot be permitted to re-agitate and reargue questions which have already been addressed and decided; that 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 under Order 47 Rule 1 CPC.

19. In **Pancham Lal Pandey vs. Neeraj Kumar Mishra and others, AIR 2023 (SC) 948**, the Supreme Court observed that the provision of review is not to scrutinize the correctness of the decision rendered rather to correct the error, if any, which is visible on the face of the order / record without going into as to whether there is a possibility of another opinion different from the one expressed. In **M/s. Tata Steel Ltd. vs. Commissioner Trade Tax, Lucknow, 2024 (6) ADJ 248**, reliance was placed by this Court on **Aribam Tuleshwar Sharma v. Pishak Sharma reported in (1979) 4 SCC 389**, wherein the Hon’ble Supreme Court propounded that review power and appellate power are inherently distinct. While the appellate power enables the courts to rectify all manners of errors in the judgment or order under challenge, review power does not. In **Parsion Devi v Sumitri Devi reported in (1997) 8 SCC 715**, the Hon’ble Supreme Court espoused that the

power under Order 47 Rule 1 of the CPC, 1908 does not allow for an erroneous decision to be “reheard and corrected.” In **Thungabhadra Industries Ltd. v. Govt. of A.P.** [AIR 1964 SC 1372 : (1964) 5 SCR 174] (SCR at p. 186), the Hon’ble Supreme Court opined that 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. Similar view was taken in **Meera Bhanja v. Nirmala Kumari Choudhury** [(1995) 1 SCC 170].

20. In **Lily Thomas v. Union of India**, (2000) 6 SCC 224 : 2000 SCC (Cri) 1056, it is observed and held that the 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 in the said decision that 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” as was held in **Chhajju Ram v. Neki**, 1922 SCC OnLine PC 11 : (1921-22) 49 IA 144 : AIR 1922 PC 112 and approved in **Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius**, AIR 1954 SC 526.

21. Similar proposition has been laid down in judgment of Hon’ble Supreme Court in **State Bank of India (supra)** cited by learned counsel for the respondent.

22. Despite the restricted scope of a review application, this Court has heard the applicant at length and gone through the record again, however this Court does not find any error apparent on the face of the record so as to take a different view regarding

abatement.

23. At the same time, as far as the acquisition proceedings are concerned, it is observed that its effect would be seen by the trial court on its own merits and any finding recorded by this Court in that regard would not be treated as a final opinion qua the same.

24. Accordingly, without changing the final decision in the appeal, the review application is **disposed of** with the aforesaid observations.

Order Date :- 26.5.2025

AKShukla/-

(Kshitij Shailendra, J.)