



20240811:103504

HIGH COURT OF JUDICATURE AT ALLAHABAD
CIVIL MISC REVIEW APPLICATION No. - 355 of 2024

H.K.S. Developers Pvt Ltd

.....Applicant(s)

Versus

State Of Up And 4 Others

.....Opposite Party(s)

Counsel for Applicant(s)	: Rahul Agarwal
Counsel for Opposite Party(s)	: C.S.C., Punit Kumar Gupta

Court No. - 54

HON'BLE CHANDRA KUMAR RAI, J.

1. Heard Sri Arpit Agarwal, learned counsel for the review-applicant/writ petitioner and Sri Punit Kumar Gupta, learned counsel for the opposite party/respondent.

2. The review application has been filed against the final judgment and order dated 17.8.2023 passed by this Court, dismissing the instant writ petition on merit.

3. Learned counsel for the review applicant-writ petitioner pressed all the grounds taken in the review application in order to demonstrate that judgment dated 17.8.2023, passed by this Court should be reviewed and the writ petition filed by the petitioner should be allowed on the ground set up in the writ petition. He placed the averment made in the review application as well as in the writ petition in order to demonstrate that writ petition is to be heard afresh after recalling the judgment dated 17.8.2023 passed by this Court.

4. On the other hand, learned counsel appearing for the opposite party-respondent submitted that each and every ground taken in the review application has been taken into consideration by the Court while deciding the writ petition vide order dated 17.8.2023, as such, review application cannot be entertained by this Court. He submitted that review is not rehearing of the entire proceeding in view of the ratio of law laid down by the Apex Court in **Civil Appeal Nos.1167-1170 of 2023, M. Murali Sundaram vs. Jothibai Kannan and Others, Judgement Dated:24.2.2023.**

5. I have considered the arguments advanced by learned counsel for the parties and perused the records.

6. This Court while deciding the writ petition has passed the detailed order, considering each and every aspect of the matter. The operative parts of the order dated 17.8.2023 of the aforesaid

judgment are quoted hereunder:-

"13. Considering the finding recorded by the Addl. District Magistrate/revisional court, there is no scope for interference under Article 226 of the Constitution of India at the instance of the petitioner as petitioner is claiming right on the basis of unregistered deed, alleged to be executed on 26.4.2010, which was registered in the year 2014, i.e., after the date of decision the title dispute by the revisional court.

14. Once the title dispute under the U.P. C.H. Act, at the instance of the tenure holders claiming right from the recorded tenure holders, has attained finality, the petitioner cannot reopen the matter after such a long period, on the basis of sale-deed which was unregistered on the date of decision of revision vide order dated 17.4.2013. It is also material that dispute against the basic year entry was going on for more than 25 years and the same has attained finality in the year 2013, as such, the recall/restoration filed by the petitioner on 8.6.2018 to reopen the title proceeding further, has been rightly refused by the Addl. District Magistrate while passing the order dated 10.4.2019.

15. The case law cited by learned counsel for the petitioner is not applicable in the facts and circumstances mentioned above.

16. Considering the entire facts and circumstances of the case as well as the finding recorded by the Addl. District Magistrate, while rejecting the recall/restoration application, filed by the petitioner, no interference is required in the matter.

17. The writ petition is accordingly dismissed. Interim order granted on 28.9.2021 stands vacated.

18. All the pending applications in the writ petition stand disposed of."

7. The finding recorded by this Court while dismissing the writ petition fully demonstrates that the order has been passed on merit after considering the entire evidence on record, as such, the review application filed on behalf of the writ petitioner is abuse of process of law.

8. It is material to mention that dispute under Section 9-A(2) of the U.P. C.H. Act has been rightly dealt with under the judgment dated 17.8.2023 which cannot be examined again and again by this Court under Article 226 of the Constitution of India.

9. The Apex Court in **Parsion Devi and Others vs. Sumitri Devi and Others**, reported in (1997) 8 SCC 715 has discussed the scope of review application. Paragraph nos.7 to 10 of the **Parsion Devi** (supra) is quoted herenuder:-

"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. Govt. of A.P.* [AIR 1964 SC 1372 : (1964) 5 SCR 174] (SCR at p. 186) this Court opined:

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is 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 Bhanja v. Nirmala Kumari Choudhury* [(1995) 1 SCC 170] while quoting with approval a passage from *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* [(1979) 4 SCC 389] 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 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".

10. Considered in the light of this settled position we find that Sharma, J. clearly overstepped the jurisdiction vested in the Court under Order 47 Rule 1 CPC. The observations of Sharma, J. that "accordingly, the order in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunctions were provided" and as such the case was covered by Article 182 and not Article 181 cannot be said to fall within the scope

of Order 47 Rule 1 CPC. 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. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25-4-1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which was not of such a nature, "which had to be detected by a long-drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment-debtors could have approached the higher forum through appropriate proceedings to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review" of the order of Gupta, J. on the grounds detailed in the review petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and we accordingly accept this appeal and set aside the impugned order dated 6-3-1997."

10. In the judgment of **S. Murali Sundaram** (supra), the Apex Court has again reiterated the earlier view taken in **Parsion Devi** (supra) that review proceedings are not by way of appeal and have to be strictly confined to the scope of ambit under Order 47 Rule 1 read with Section 114 C.P.C. Paragraph No.6 of the Judgment will be relevant for perusal which is quoted hereunder:-

"6. In view of the above and for the reasons stated above and applying the law laid down by this Court on Order 47 Rule 1 read with **Section 114** CPC, we are of the opinion that in the present case while allowing the review application the High Court has exceeded in its jurisdiction and has exercised the jurisdiction not vested in it under Order 47 Rule 1 read with **Section 114** CPC and therefore the impugned judgment and order passed by the High Court allowing the review application and setting aside the order dated 03.03.2007 passed in Writ Petition No.8606 of 2010 is unsustainable and the same deserves to be quashed and set aside.

6.1 As the Contempt Petition has been dismissed by the High Court on setting aside the order dated 03.03.2017 passed in Writ Petition No.8606 of 2010, on setting aside the order passed in Review Petition and consequently restoring the order dated 03.03.2017

passed in Writ Petition No.8606 of 2010 the dismissal of the contempt petition is to be set aside and the matter is to be remitted to the High Court to decide the same afresh in accordance with law and on its own merits.

6.2 Similarly the order dismissing the Writ Petition (MD) No.14847 of 2017 and Writ Petition (MD) No.16256 of 2017 is also to be quashed and set aside and the said writ petitions are to be remanded to the High Court to decide the same afresh in accordance with law and on its own merits."

11. Considering the facts and circumstances of the case and in view of the ratio of law laid down by the Apex Court in **Parsion Devi** (supra) and **S. Murali Sundaram** (supra), no interference is required against the final judgment and order dated 17.8.2023.

12. The review application is devoid of merit and is, accordingly, dismissed.

May 5, 2026
C.Prakash

(Chandra Kumar Rai,J.)