

**THE HIGH COURT OF TRIPURA
AGARTALA**

REV. PET NO. 03 of 2015

PETITIONERS :

- 1. Smt. Subhasini Shil,**
W/o Late Girindra Chandra Shil.
- 2. (a) Smt. Gita Rani Shil,**
W/o Late Upendra Ch. Shil.

2(b) Shri Pintu Shil,
S/o Lt. Upendra Ch. Shil.

2(c) Shri Santosh Shil,
S/o Lt. Upendra Ch. Shil.

2(d) Smt. Arpita Rani Shil,
D/o Lt. Upendra Ch. Shil.
- 3. Shri Jogendra Chandra Shil,**
S/o Late Girindra Chandra Shil.
- 4. Shri Narayan Shil,**
Son of Late Girindra Chandra Shil.
- 5. Sri Sukhendra Chandra Shil,**
Son of Late Girindra Chandra Shil.

Sl. No. 1 to 5 of Vill- Chebri,
Paragana-Birchandrapur,
P.S. Khowai,
Distt. West Tripura.
- 6. Smt. Milan Rani Shil,**
D/o Late Girindra Chandra Shil,
W/o Sri Binode Behari Chanda,
Dharmanagar, Vill- Uttarhurua,
P.O. Kalachara,
District- North Tripura.
- 7. Smt. Phulan Rani Shil,**
D/o Late Girindra Chandra Shil,
W/o Late Prabindra Chandra Shil,
Vill-Basudeve Para,
P.S. Ambassa,
District-North Tripura.

BY ADVOCATES :

Mr.D.K.Biswas,
Mr.G.K.Nama,

- Vrs -

RESPONDENT-OPPOSITE PARTIES :

- 1. (a) Smt. Bela Acharjee,**
W/o Late Sunil Kumar Acharjee,
resident of Maharaj Ganja Bazar,
P.S. Khowai, District- West Tripura.
- 1(b) Sri Pinaki Acharjee,**
Son of Late Sunil Kumar Acharjee,
resident of Maharaj Ganja Bazar,
P.S. Khowai, District- West Tripura
- 1(c) Smt. Malabika Acharjee,**
D/o Late Sunil Kumar Acharjee,
resident of Maharaj Ganja Bazar,
P.S. Khowai, District: West Tripura.
- 1(d) Smt. Mallika Acharjee,**
D/o Late Sunil Kumar Acharjee,
W/o Sri Bijit Kumar Acharjee,
resident of Rehabari,
Guwahati, Assam.
- 1(e) Smt. Mukti Chowdhury,**
D/o Late Sunil Kumar Acharjee,
W/o Sri Shaktibrata Chowdhury,
resident of Vidyasagar Road,
Jogendranagar, P.S. East Agartala,
District- West Tripura.
- 1(f) Smt. Mitali Acharjee,**
D/O. Late Sunil Kumar Acharjee,
W/o. Sri Narayan Acharjee,
resident of Lumding,
Nowgaon, Assam.
- 2. (a) Smti. Anupama Acharjee,**
W/o Lt. Sudhangsu Acharjee,
Vill. Chebri, P.O. Khowai,
District- West Tripura.
- 2(b) Sri Soumen Acharjee,**
W/o Lt. Sudhangsu Acharjee,
Vill. Chebri, P.O. Khowai,
District- West Tripura.
- 2(c) Smti. Dulali Acharjee,**
W/o Sri Binode Lal Acharjee,
Resident of Khowai town (Near Srinath
Vidyaniketan), P.O. Khowai,
District- West Tripura.

2(d) Smti. Rupali Acharjee,
W/o Sri Bapi Acharjee,
Vill. Barjala, P.S. East Agartala,
District- West Tripura.

2(e) Smti. Gouri Acharjee(Das),
W/o Sri Biswajit Das,
Vill. Chebri, P.O. Khowai,
District- West Tripura.

3. Smt. Renu Bala Acharjee,
W/o Late Aswini Kumar Acharjee,
D/o Late Sashi Bhusan Acharjee,
Vill. Chebri, P.O. Khowai,
District- West Tripura.

4. Smt. Dhira Bala Acharjee,
D/o Late Sashi Bhusan Acharjee,
Village- Nak Phul, P.O. Kamalpur,
District- Dhalai.

5. Smt. Namita Acharjee,
W/o Nani Gopal Acharjee,
D/o Late Sashi Bhusan Acharjee,
P.O. Ulubari, G.S. Road, Guwahati,
Assam.

6. Smt. Khela Acharjee,
W/o Sri Sudhangshu Acharjee,
D/o Late Sashi Bhusan Acharjee,
Vill. Krishnanagar, Thakur Palli Road,
Agartala, District- West Tripura.

7. Sri Ashim Acharjee,

8. Smti. Nupur Acharjee.

9. Smti. Sikha Acharjee.

10. Smti. Pitu Acharjee.

11. Smti. Sheli Acharjee.
Sl.No. 7 to 11 : Legal heirs of
Late Aswini Acharjee, Vill. Chebri,
P.S. Khowai, District- West Tripura.

12. (Struck out).

13. (a) Smt. Aparna Acharjee,
W/o Lt. Nikhil Acharjee.

13(b) Sri Nirjhar Acharjee,
Son of Late Nikhil Acharjee.

13(c) Smt Anita Acharjee,
Wife of Sri Tapan Acharjee,

13(d) Smt. Sumita Acharjee,
W/o Sri Sankar Acharjee,

13(e) Smt. Rita Acharjee,
D/o Lt. Nikhil Acharjee,
Village-Chebri, P.S. Khowai.
District- West Tripura.

14. Sri Dipak Acharjee,
S/o Late Mono Ranjan Acharjee,
Ganki, (Near Fire Service Station),
P.S. Khowai, District- West Tripura.

15. (a) Smti. Bela Acharjee,
D/o Late Mono Ranjan Acharjee.

(b) Smt. Suprabha Acharjee,
D/o Late Nikhil Acharjee.

(c) Sri Malay Acharjee,

(d) Smti. Tapati Acharjee,

(e) Smti. Sathi Acharjee,

(f) Sri Pralay Acharjee,

All are the legal heirs of Late Mati Lal Acharjee,
Village- Chebri, P.O. Khowai.

BY ADVOCATE :

Mr.N.Das,

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

Date of hearing & delivery of
Judgment & order : **07.10.2015.**

Whether Fit for Reporting :

Yes	No
√	

JUDGMENT & ORDER(ORAL)

This petition under Section 114 read with Order 47 Rule 1 of CPC is filed by the petitioners(appellants) seeking review of judgment and decree dated 17.01.2015 passed by this Court in RSA No. 03 of 2008.

2. Heard learned counsel, Mr. D. K. Biswas for the petitioners(appellants) and learned counsel, Mr. N. Das for the opposite parties(respondents).

3. It is, *inter alia*, contended by the petitioners that the predecessor of the opposite parties purchased 12 kanis 7 gangas of land and T.S. 04 of 1958 was filed by the predecessor of the opposite parties seeking injunction over 3 kanis of land and recovery of possession of 2 kanis of land. The suit land of T.S. 04 of 1958 was the land of old Jote No.63, which the predecessor of the opposite parties purchased from one Azhar Ullah. That suit was decreed in favour of the predecessor of the defendants and the decree has got finality after disposal of the second appeal. It is the contention of the petitioners(appellants) that the suit land described in schedule-I of T.S. 41 of 1979 is a khas land, which was possessed by the predecessor of the petitioners(appellants), and they are in continuous possession for more than 50 years. The suit land of T.S. 41 of 1979 is not included within the purchased Jote land of the predecessor of the defendants and so the finding of the trial Court in T.S. 41 of 1979 and the finding of the appellate Court in T.A. 06 of 2007 that the

suit is barred by *res judicata* was a wrong decision and this Court was supposed to set aside the judgment passed by the trial Court and the appellate Court. It is further contended by the petitioners that the predecessor of the opposite parties sold out 12 kanis 7 gandas of land, which they purchased and, therefore, they have no remaining land for a decree in their favour. The decree in T.S. 04 of 1958 was a fraud since before the disposal of second appeal the predecessor of the respondent-opposite parties already sold out the entire land they purchased and, therefore, that decree was obtained by fraud.

4. Learned counsel, Mr. Biswas appearing for the petitioners submitted that non-consideration of the fact that the predecessor of the opposite parties already sold out 12 kanis 7 gandas of land, which they purchased from Azhar Ullah of Jote No.63 and that there was no remaining land in their hand for having a decree itself is an error apparent on the face of the record and, therefore, a review is permissible. He has submitted that where a fraud was alleged, the finding of the Courts below that the suit was barred by *res judicata* is not tenable, since it is settled law that where fraud is pleaded *res judicata* shall not apply. He has further submitted that in T.S. 41 of 1979 the plaintiff-petitioners prayed for a decree of permanent injunction in respect of the land described in schedule-I of the plaint and further prayed for declaring that the decree obtained in T.S. 04 of 1958, which was merged in the appellate decree in Second Appeal No. 11 of 1970, is a nullity and a void decree. The land

described in schedule-I of the plaint is khas land under possession of the plaintiff-petitioners for more than 50 years and the same is not a part of decretal land of T.S. 04 of 1958. Both the Courts below committed mistakes in not considering the fact that it was a khas land in the possession of the plaintiff-petitioners. This Court also while passing the judgment missed that fact and so it is an error apparent on the face of the record and the error should be rectified by setting aside the judgments passed by the trial Court and the appellate Court. He has also submitted that this Court is a Court of record and the record should be maintained correctly and no falsehood or fraud should be allowed to perpetuate by way of upholding wrong judgment passed by the sub-ordinate Courts. In support of his contention, he has relied on the decisions of the Apex Court in the cases of **(1) Ram Chandra Singh V. Savitri Devi & ors., (2003) 8 SCC 319, (2) M.M. Thomas V. State of Kerala & anr., (2000) 1 SCC 666, (3) Karnataka Rare Earth & anr. V. Senior Geologist, Department of Mines & Geology & anr., (2004) 2 SCC 783, (4) Lily Thomas & ors. V. Union of India & ors., (2000) 6 SCC 224 and (5) Board of Control For Cricket In India & anr. V. Netaji Cricket Club & ors., (2005) 4 SCC 741.**

5. Mr. Das, learned counsel of the opposite parties submitted that the opposite parties and their predecessor fighting a long battle from 1958 and could not enjoy the fruit of the decree of such long litigation because of the hindrance created by

the petitioners and their predecessor by way of filing various frivolous and vexatious applications, suits and appeals. After the decree passed in T.S. 04 of 1958 was finalized in the second appeal, the opposite parties put the decree in execution and in the execution case by filing petition under Section 47 of CPC the petitioners raised the same issue that the opposite parties sold out their entire land of 12 kanis 7 gandas and that they have no land left for decree in T.S. 04 of 1958. That issue was decided by the Execution Court against which the petitioners preferred revision petition before the High Court and the revision petition was also dismissed and again they preferred a review petition and the review petition was also dismissed. He has filed the certified copies of the order passed in execution case as well as in the review case, which are annexed as Annexure-4 and 5 to the counter objection filed by the opposite parties. It is submitted by Mr. Das, learned counsel, that it is a design of the petitioners to somehow frustrate the decree passed in T.S. 04 of 1958 and the petitioners instituted T.S. 41 of 1979 with that mischievous attitude. The predecessor of the petitioners admitted the fact that the suit land of T.S. 41 of 1979 was the suit land of T.S. 04 of 1958 and so there is clear proof of *res judicata* which has been held consistently by the trial Court and the appellate Court and upheld by this Court in the second appeal and there is no error apparent on the face of the record to interfere in the review application.

6. Order 47 Rule 1 of CPC prescribes the provision as to under what circumstances a review of the judgment is to be entertained, which reads as follows :-

"1. Application for review of judgments

(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."

7. It is the case of the petitioners that the very finding of the trial Court, affirmed by the appellate Court and this Court in the second appeal that T.S. 41 of 1979 is barred by *res judicata* is an error apparent on the face of the record and so, the review is permissible. While deciding issue No.1 of T.S. 41 of 1979, the trial Court in Para 18 of the judgment observed thus :-

"18. Plaintiffs side also do not dispute the fact that Ajahar Ullah and his brother sold their entire land falling in jote no.63 of Chebri mouja to the forefathers of the present defendants and the plaintiffs also do not claim any interest in the lands of jote no.63. Now ext.'A' discloses that there had been some mistakes in the original sale deed dated 31.01.1951 regarding its boundary and in this respect in the year, 1957 a rectified kabala was executed between Ajahar Ullah and the forefathers of the present defendants, but the plaintiffs of this case are not ready to accept the rectified kabala stating that it was a fake

document and it was done to deprive the plaintiffs of their right on the lands obtained by Jong Bong Case No.85/1954. However, my Ld. Predecessor in ext. 'A' made it clear that the rectified kabala has to be accepted and came to the findings that the lands belonging to the present plaintiffs appertaining to Jong Bong Case No.85/1954 is within the lands of jote no.63 belonging to the present defendants. Ext. 'A' also discloses that the proposed settlement in the name of present plaintiffs by Jong Bong Case was bad for DOKAR settlement which means settlement twice. Ext. 'A' clarifies that all the lands of the present plaintiffs as stated in schedule I of the plaint are within the lands of jote no.63 of the present defendants. Further P.W.1 Upendra Chandra Shil in his cross-examination has corroborated the above facts by stating that the title suit bearing no.4/1958 filed by the predecessor of the present defendants in relation to the suit land is the same suit land for which the present plaintiffs filed this suit. P.W.2 also stated that the Chauhaddi of the suit land in T.S. 4/1958 is similar to the chauhaddi with the present suit.

8. In the last part of the above finding, the trial Court clearly observed that PW1, Upendra Chandra Shil, i.e., plaintiff No.2, in his cross-examination admitted that the suit land of T.S. 41 of 1979 and the suit land of T.S. 04 of 1958 is the same land. The trial Court, therefore, arrived at a conclusion that the suit land of the present suit and the suit land of the earlier suit is the same land. It is an admitted position that the present suit and the earlier suit were between the same parties and the present suit has been filed by the plaintiff-petitioners claiming that it is a khas land, but in support of their claim nothing produced before the trial Court at the time of trial. Their only stand is that the plaintiffs of T.S. 04 of 1958 already sold out 12 kanis 7 gandas of land, which they purchased from Azhar Ullah and, therefore, they remained with no other land. A copy of the judgment of T.S. 04 of 1958 exhibited by the defendants at the time of trial of T.S. 41

of 1979 and in the judgment passed by this Court in second appeal, i.e., in the impugned judgment dated 17.01.2015 in RSA No. 03 of 2008, this Court quoted para 15 of the judgment of T.S. 04 of 1958, wherein there was a clear finding of the trial Court in T.S. 04 of 1958 that there were excess land within the settled land of Jote No.63 and the plaintiffs of that suit got the excess land in their possession within the boundary of their purchased land and so, the plea of the defendants of that suit that the plaintiffs sold out the entire purchased land and had left with no other land was not correct. That finding of the trial Court in T.S. 04 of 1958 admittedly was affirmed by the appellate Court in T.A. 36 of 1968 and in the second appeal 11 of 1970 before the Agartala Bench of the then Gauhati High Court by judgment dated 26.04.1979. After fighting up to the level of second appeal before the High Court and when the second appeal was lost the present petitioners filed T.S. 41 of 1979.

9. This Court while disposing RSA No.03 of 2008 in paras 17, 18, 19 and 20 has held thus :-

"17. Even if Sashi Bhusan and his brother Monoranjan sold out 12 kanis 7 gandas of land out of their purchased land from Azhar Ullah, that cannot frustrate the decree passed in T.S. 4/58 which has been affirmed in second appeal No.11/70. It is clear that the present plaintiffs with a view to frustrate the decree of T.S.4/58 filed the present vexatious suit having no valid reason there for. It is apparent that the plaintiffs instituted the suit only to somehow avoid the decree of T.S.4/58 and to deprive the defendants from the fruit of the decree. The allegation of fraud is totally unfounded and is an imagination of the plaintiffs having no material at all to support it. While a competent court already passed decree and the decree stands good, it cannot be set aside in a subsequent suit on the ground as alleged by the plaintiffs.

18. It is settled law that fraud and justice cannot dwell together. Fraud vitiates everything and once

fraud is proved even a decree passed by a competent Court may be set aside. But there must be strict proof of fraud. A vexatious allegation against the other cannot be treated as fraud. Here, in this case, a decree was passed in an earlier suit for a specific plot of land. The plaintiffs challenged the decree alleging fraud on the ground that the rectification deed was wrong and that the predecessor of the defendants already sold out their purchased land. Such issues were substantially dealt with by the trial Court in the previous suit which has ended in second appeal. So, on that ground, the allegation of fraud cannot stand and is liable to be rejected which the trial Court and the appellate Court in my considered opinion has rightly done.

19. It is shocking that the predecessor of the defendants instituted the suit in the year 1958 and the decree passed by the Court was finally upheld in the second appeal in the year 1979 but the defendants could not enjoy the fruit of the decree because of this frivolous suit instituted by the plaintiffs and thereby the plaintiffs could avoid execution of the decree most illegally for last 36 years.

20. I find no merit in the second appeal and hence it is dismissed with costs throughout. I also feel it appropriate and proper to impose a special compensatory cost of Rs.2000/- on the plaintiffs which should be paid to the defendants."

10. On perusal of Annexure-5 to the written objection filed by the opposite parties, I find that the decree of T.S. 04 of 1958 was put in execution, which was registered as 4 Exn(T) of 1982 and in that execution case the judgment debtors (appellant-petitioners herein) filed an objection under Section 47 of CPC, which was registered as Civil Misc. 09 of 1987 and by order dated 11.06.1987 that objection was disposed of and a perusal of that order shows that appellant-petitioners/their predecessor took the same plea that the purchased land of the decree holders, i.e., plaintiffs of T.S. 04 of 1958, were already sold out.

11. Annexure-4 to the written objection filed by the opposite parties further shows that revision petition was filed before the High Court challenging that order passed by the

executing Court and revision petition was also dismissed and thereafter a review petition was filed which was registered as Civil Review No.02 of 1987 and the same plea was taken in the review petition. A copy of that order dated 04.08.1993 in Civil Review No.02 of 1987 has been annexed as Annexure-4, which reads as follows :-

"Respondents' predecessor filed a suit in 1958 against the petitioners' predecessor in regard to immovable property. Trial Court decreed the suit. The decree was confirmed by the first appellate Court and modified by the second appellate Court. Execution was filed at that stage. The petitioners filed an application u/s.47 of C.P.C. raising certain contentions. The executing court over-ruled the contentions and dismissed the application. This order was challenged in revision and the revision petition was dismissed. Thereafter the present petition for review is filed.

2. Learned counsel for the petitioners submitted that in the written statement a plea has been raised that the plot shown in the second schedule is imaginary and did not exist. This plea did not find favour with the Court. Such a contention cannot be raised now. Learned counsel also contended that during pendency of the suit the plaintiff sold away whatever land he had purchased prior to suit. At least this contention could have been raised before the trial Court before disposing of the suit or at any time before the appellate Court. That was not done.

3. In the circumstances I fail to see how it can be accepted that there is any error in face of the record requiring review.

4. The petition is dismissed."

12. That plea once again taken by the petitioners as plaintiffs in T.S. 41 of 1979 and that is the basis of their filing of T.S. 41 of 1979 on the allegation of fraud. The trial Court as well as the appellate Court considered the allegation of fraud while deciding the issues of T.S. 41 of 1979 and this Court in the

second appeal upheld the decision of the trial Court and the appellate Court and found no merit in the second appeal.

13. The allegation of fraud brought by the plaintiffs of T.S. 41 of 1979 is based on the sale deed executed by the predecessor of the defendants in respect of the land of Jote No.63, which they purchased from Azhar Ullah. That issue has been very meticulously considered by the trial Court, the appellate Court and this Court. In the judgment of T.S. 04 of 1958 it has been clearly held by the trial Court, which has been upheld by the appellate Court, as well as in the second appeal by the High Court that the plaintiffs of T.S. 04 of 1958 have excess land within the boundary of Jote No.63, which they purchased from Azhar Ullah. While that finding in T.S. 04 of 1958 has been perfected, the subsequent suit alleging that the decree was obtained by fraud is nothing but a vexatious suit instituted by the present appellant-petitioners to frustrate the decree in the earlier suit. The appellant-petitioners though contended that the land described in schedule-I of the plaint is a khas land in their possession, but they have placed nothing on record that they were in possession of the khas land and that the land of schedule-I is outside the decree passed in T.S. 04 of 1958.

14. The decree passed in T.S. 04 of 1958 was for Jote land purchased by the plaintiffs of that suit within specific boundary which is decreed by the Court and the plaintiffs of present suit in disguise of having the khas land cannot get a

decree from the Court while they have admitted that the land of the present suit and the land of the earlier suit was the same land.

15. A review is permissible only in the event of discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge or could not be produced or some mistake or error apparent on the face of the record or for any other sufficient reason. There is nothing to show that any new and important matter or evidence has been discovered.

16. Mr. Biswas, learned counsel contended that after disposal of the present second appeal, the petitioners came to know from some sources that the suit land of T.S. 41 of 1979 was khas land and was wrongly recorded as Jote for which the petitioners submitted application under Section 95 of the TLR & LR Act for correction of the record of right and the District Magistrate & Collector had enquired into the matter and it was found that the suit land was originally Khas land. Any such contention which was not raised at the time of decision of T.S. 04 of 1958, i.e., earlier suit between the same parties, cannot now be accepted as a new and important matter or evidence for consideration of the review application. The further contention of the petitioners that the predecessor of the opposite parties sold out the entire purchased land at the time of pendency of the second appeal T.S. 04 of 1958 itself, cannot be termed as an

error apparent on the face of the record and on that ground the review is not permissible.

17. The Supreme Court in the case of **Meera Bhanja(Smt) V. Nirmala Kumari Choudhury(Smt), (1995) 1 SCC 170** has observed thus :-

"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. The review petition has to be entertained only on the ground of error apparent on the face of the record and not on any other ground. An error apparent 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 points where there may conceivably be two opinions. The limitation of powers of court under Order 47 Rule 1, CPC is similar to the jurisdiction available to the High Court while seeking review of the orders under Article 226."

18. In the case of **Parsion Devi & ors. V. Sumitri Devi & ors., (1997) 8 SCC 715**, the Supreme Court has observed thus:-

"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."

19. In the case of **Haridas Das V. Usha Rani Banik(Smt.) & ors., (2006) 4 SCC 78**, the Supreme Court in para 13 of the judgment has observed :-

"13. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the Court since it merely states that it "may make such order thereon as it thinks fit." The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict. This is amply evident from the explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the Court should exercise the power to review its order with the greatest circumspection. This Court in M/s. Thungabhadra Industries Ltd. v. Govt. of A.P. held as follows:

"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 characterized 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. where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

20. Same principle has been enunciated by the Apex Court in the case of **Lily Thomas (supra)**. In para 52 of the judgment the Apex Court has observed :

".....The review is not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error."

The above observation of the Apex Court contemplates that the review petitioners are to point out a mistake or error, which was not noticed by the Court while deciding the issues. In the present case, a conscious decision referring to the material on record has been taken consistently by the trial Court, appellate Court as well as by this Court in the second appeal. So, the submission of learned counsel, Mr. Biswas that it was an error apparent on the face of the record cannot be accepted.

21. In the case of **Board of Control For Cricket in India(supra)** also the Supreme Court has enunciated the same principle in para 89 and 90, which read as follows :-

"89. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason."

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47, Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit"

22. Learned counsel, Mr. Biswas also relied on the decision of the Apex Court in **Ramchandra Singh(supra)**, but I find no scope at all to apply the ratio in this case. No doubt the appellant-petitioners as plaintiffs pleaded fraud alleged to have exercised by the opposite party-respondents in T.S. 04 of 1958, but it is a consistent decision that there was no element of fraud and the decision was taken based on material and, therefore, the ratio of **Ram Chandra Singh(supra)** has no manner of application in the fact of the present case.

23. This Court is a Court of record and it is a constitutional obligation that the records should be maintained perfectly. There is nothing to show that an incorrect record has been directed to be maintained. What learned counsel, Mr. Biswas intended to say referring to **M.M.Thomas (supra)** is not applicable in the fact of the present case since I find nothing to hold that incorrect finding has been given by this Court in the second appeal and that there are any error apparent on the face of the record.

24. The ratio of the decision in the case of **Karnataka Rare Earth (supra)** is wholly misplaced since there is nothing to show that wrong has been done by the Courts while deciding T.S. 04 of 1958 and T.S. 41 of 1979.

25. In my considered opinion, there is no error apparent on the face of the record to allow a review petition as prayed for. The review petition, therefore, stands dismissed with special compensatory cost of Rs.5,000/- (Rupees five thousand) to be paid to the opposite parties.

JUDGE