

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION M.P. No. 5897 of 2015

IN

CIVIL REVISION PETITION No.2314 of 2015

ORDER:

Seeking Review of the order dated 09.09.2015 in Civil Revision Petition No.2314 of 2015, the present application is filed under Section 114 read with Order 47 Rule 1 of Code of Civil Procedure.

In order to appreciate the ground raised in this application, it would be necessary to refer to the facts involved in the matter. The plaintiffs, who are the petitioners in C.R.P., filed a suit for declaration of title and possession of land stating that the first plaintiff is the owner of land admeasuring 24.50 sq. yards bearing H.No.4-2-119/A and the second plaintiff is the owner of the land admeasuring 24.50 sq. yards bearing H.No.4-2-119/B. The father of the plaintiffs acquired Ac.0.03 gts., of land out of Ac.0.12 guntas in Sy.No.214 in an oral partition and the said land was inherited to the plaintiffs. It is said that the plaintiffs erected small sheds and also obtained house numbers from the Municipal authorities. In the year 2012, the plaintiffs claim to have removed the sheds and applied for permission for construction of RCC shops in the said land. At that point of time, the defendants demanded the plaintiffs to sell the land as they are having

adjacent land. But, the plaintiffs refused for the same. In view of their refusal, defendants 1 to 5 started digging the schedule land and tried to occupy the same. As there was no action from any authorities, the plaintiffs were forced to file a suit for declaration of title and recovery of possession against defendants 1 and 2. A written statement came to be filed opposing the same. After referring to the averments made in the plaint, written statement filed and basing on the material available on record this Court having held that there is dispute between the parties with regard to survey number in which the schedule land exists, opined that appointment of a Commissioner could undoubtedly assist the Court to arrive at just and correct conclusion.

Now, a Review petition is filed stating that the petitioners suppressed the evidence of P.Ws.2 and 4, who categorically admitted that the land in question is situated in Survey No.203. It is contended that when the witnesses themselves are admitting that the subject land is situated in Survey No.203, there is no point in conducting survey in 214. It has been specifically stated that non-consideration of the admissions made by P.Ws.2 and 4 resulted in error, which is apparent on the face of the record.

The learned counsel for the respondents opposed the same contending that this Court considered all the

material that was available on record and accordingly ordered appointment of Advocate Commissioner, which warrants no interference.

Before proceeding further, it is worth noting that though the petitioners in C.R.P. have not filed the entire evidence on record nothing prevented the respondents from filing the evidence of P.Ws.2 and 4, on which they are now relying. It may be true that the petitioners should have filed all the evidence available on record but at the same time nothing precluded the respondents from filing the material which the petitioners failed to file at the time of the arguments. It is not the case of the respondents that the petitioners herein/respondents in C.R.P. were not heard at the time of passing the order in C.R.P.

That being the issue, the question is “Whether the Court can now refer to the material which was not placed before this court at the time of disposal of the C.R.P. and review the order basing on the fresh material?”

One of the arguments that was strenuously contended by the learned counsel for the Review Petitioners is that the petitioners in the main C.R.P. have played fraud by not filing all the material before this Court. He relied upon the judgment of the Apex Court in **Meghamala and others v. G.Narasimha Reddy and others**^[1] in support of his plea wherein it is held as

under :

“The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud. (See District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Anr. Vs. M. Tripura Sundari Devi (1990) 3 SCC 655; Union of India and Ors. Vs. M. Bhaskaran (1995) Suppl. 4 SCC 100; Vice Chairman, Kendriya Vidyalaya Sangathan and Anr. Vs. Girdharilal Yadav (2004) 6 SCC 325; State of Maharashtra v. Ravi Prakash Babulalsing Parmar (2007) 1 SCC 80; Himadri Chemicals Industries Ltd. Vs. Coal Tar Refining Company AIR 2007 SC 2798; and Mohammed Ibrahim and Ors. Vs. State of Bihar and Anr. (2009) 8 SCC 751).

Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. FRAUD is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. (Vide Dr. Vimla Vs. Delhi Administration AIR 1963 SC 1572; Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550; State of Andhra Pradesh Vs. T. Suryachandra Rao AIR 2005 SC 3110; K.D. Sharma Vs. Steel Authority of India Ltd. and Ors. (2008) 12 SCC 481; and Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir and Ors. (2008) 13 SCC 170).

An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. (Vide S.P. Chagalvaraya Naidu (supra); Gowrishankar and Anr. Vs. Joshi Amba Shankar Family Trust and Ors. AIR 1996 SC 2202; Ram Chandra Singh Vs. Savitri Devi and Ors. (2003) 8 SCC 319; Roshan Deen Vs. Preeti Lal AIR 2002 SC 33; Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education AIR 2003 SC 4628; and Ashok Leyland Ltd. Vs. State of Tamil Nadu and Anr. AIR 2004 SC 2836).

From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away.

In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est. “

It is true that the petitioners have not filed the evidence of P.Ws.2 and 4, which is now sought to be relied upon by the learned counsel for the respondents, but, at the same time, it is to be noted that the respondents were heard at the time of hearing of the C.R.P., and nothing prevented them from filing the material which the petitioners failed to do so. On the other hand, the petition filed before the trial court, which has been filed before this Court, refers to examination of P.Ws.2 and 4. In view of the above it cannot be said that there was any fraud or deception played by the petitioner in the main C.R.P. Had it been an ex parte order, definitely it would have been otherwise.

Coming to the scope of review the Apex Court in **Inderchand Jain (dead) through L.Rs. v. Motilal (dead) through L.Rs.** ^[2], laid down the guidelines as to when an application for review would lie. Dealing with the said aspect, the Apex Court held as under :

“An application for review would lie inter alia when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In *Rajendra Kumar v. Rambai* [air 2003 SC 2095], this Court held :

"The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error

apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed. "

The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason.

It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A re-hearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order."

I n H.A.Mohan Kumar and others v.

P.Muralidhar^[3], a Division Bench of this Court held as under :

"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.

Power of review can be exercised for correction of the mistakes and not to substitute a view. Further, the review powers ought to be exercised within four corners of the statute dealing with the power. The review is not analogous to that of an appeal and it cannot be treated as an appeal in disguise. Even if there is possibility of two views on the subject, yet it is not a ground for review. The parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the Court of the legal result..... If this view is permitted litigation would have no end, except when legal ingenuity is exhausted."

From a reading of the judgments referred to above,

it is clear that a review court cannot sit in appeal over its own order. The power of review has to be exercised for correction of mistakes and not to substitute a view. Further, not placing of evidence, which was to the knowledge of the review petitioner, cannot be a ground to entertain a review petition.

The learned counsel for the review petitioner mainly stressed on paragraph 33 of **Inderchand Jain's case(2 supra)** wherein, the Apex Court upheld the findings of the High Court with regard to the Review jurisdiction, which would be necessary to refer here.

"The High Court had rightly noticed the review jurisdiction of the court, which is as under:

"The law on the subject - exercise of power of review, as propounded by the Apex Court and various other High Courts may be summarized as hereunder: (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 C. P. C. (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 be conceivable 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'. "

In our opinion, the principles of law enumerated by it, in the facts of this case, have wrongly been applied."

Dealing with clause iv of the said guidelines, the learned counsel for the petitioners submits that the power

of the review can be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a Court or even by an Advocate.

Dealing with scope of “review” and the word “sufficient reason” in Order 47 Rule 1 of C.P.C., a Full Bench of this Court in **B.F.Pushpaleela Devi v. State of Andhra Pradesh and others**^[4] held as under :

“The words ‘for any other sufficient reason’ must be one sufficient to the court to which the application for review is made and they cannot be held to be limited to the discovery of new and important matter or evidence or the occurrence of mistake or error apparent on the record. The ground of review must be something, which existed at the date of decree, and the rule does not authorize the review of a decree, which was right when it was made, on ground of the happening of some subsequent event. Further, it is a condition precedent that no superior Court should have been moved for selfsame relief before filing a review petition. The error must be one which strikes one on merely looking at the record and which would not require any long drawn process of reasoning on a point where there may conceivably be two opinions.”

From the judgment referred to above, the word “for any other sufficient reason” must be one sufficient to the court to which an application for review is made and cannot be held to be limited to the discovery of new and important matter or evidence or the occurrence of mistake or error apparent on the record.

In the instant case, the evidence of P.Ws.1 to 5 was complete by the date of filing of the application for appointment of an Advocate-Commissioner. Though the

application filed before the Lower Court refers to completion of evidence of P.Ws.1 to 5 but the depositions of P.Ws.2 and 4 were not placed before the Court by the counsel for the petitioners or the counsel for the respondents. Therefore, it cannot be said that the petitioners have mislead the Court or played fraud while obtaining an order in their favour. The respondents, who were also heard, should have furnished the information which was in their favour. It is not the case of the respondents, who are petitioners herein, that they were not aware about the evidence since they cross-examined all the 5 witnesses before the trial court. Such being the position, the allegation of fraud and deception, cannot be accepted. Since the order came to be passed basing on the material available on record and having regard to the judgments referred to above, I see no grounds to review the order dated 09.09.2015 passed in Civil Revision Petition No.2314 of 2015.

Accordingly, the C.R.P.M.P. No.5897 of 2015 is dismissed. No costs. As a sequel to it, miscellaneous petitions pending if any in this petition shall stand closed.

**JUSTICE C.
PRAVEEN KUMAR**

Dt:15.12.2015.
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- [\[1\]](#) (2010)8 Supreme Court Cases 383
- [\[2\]](#) (2009)14 Supreme Court Cases 663
- [\[3\]](#) 2005(5) ALD 552
- [\[4\]](#) 2002(5) ALD 1 (LB)