

IN THE HIGH COURT OF BOMBAY AT GOA.

**CIVIL REVIEW APPLICATION NO.30 OF 2014
IN FIRST APPEAL NO.172 of 2006**

SHRI RAMESH SUKDOW BHANDARI

APPLICANT

VERSUS

CHANDRAKALA SHANTARAM N. GAONKAR
AND 8 ORS.

RESPONDENTS

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Shri R. Menezes, Advocate for the applicants.
Shri Sudin Usgaonkar, Senior Advocate with Shri
K.Padgaonkar, Advocate for the respondents.

**CORAM : NUTAN D.SARDESSAI, J.
RESERVED ON :16/09/2016.
PRONOUNCED ON : 20/10/2016**

ORDER :

1] The applicant who was the original appellant seeks a review of the judgment and award dated 11.7.2014 passed by this Court (U.V. Bakre, J) pursuant to which the Appeal against the judgment and award dated 15.2.2006 passed by the learned Adhoc Additional District Judge Fast Track Court-I, South Goa, Margao was upheld being in accordance with the settled principles of law and the Appeal dismissed as no interference was called for with the same.

2] The applicant carved a case that he was

aggrieved with the judgment dated 11.7.2014 of this Hon'ble Court dismissing his Appeal and submitted that there were errors apparent on the face of the record in the impugned order. The evidence led on behalf of the applicant before the Reference Court in fact set out the nexus/relationship between Babul Zomon Naik and the applicant which was neither controverted nor rebutted. The finding of this Court therefore that he had nothing to do with Babul Zomon Naik was erroneous and apparent on the face of the record. The applicant had produced the Revenue Entry of Inscription and Description No.9056 showing the name of Babul Zomon Naik as the owner of the suit property with whom the applicant had set out his nexus. This Court had however not appreciated the strong evidence of title in favour of the applicant.

3] Besides, the applicant had disputed the respondents' case that Babul Zomon Naik was from the Maratha Kshatriya Caste and the applicant was not but had not led any evidence and failed to prove such contention which however the Reference Court failed to appreciate. The decree in the Civil Suit No.4595 of 1892 was interse between the parties and not against the applicant and as such could neither bind him nor could it be conclusive of

the respondents right in respect of the suit properties. The reliance on this decree by the Reference Court and this Court in favour of the respondents was therefore erroneous. It was also the applicant's case that various properties were allotted by a final order dated 9.2.2001 in the Inventory Proceedings no.3/2000/C including the suit property which was owned by Babul Zomon Naik. The Inventory Proceedings clearly recorded in detail regarding the Survey No.176 and was strong evidence to substantiate the applicant's claim to the suit property.

4] The final order in the Inventory Proceedings had attained finality as it was not assailed in any proceedings and therefore the view of the Reference Court that it did not advance his case was wholly erroneous. This Court too did not consider the said document and committed an error apparent on the face of the record. A purported donation made by Publication in the Official Gazette of a part of the subject property in his capacity as the Secretary of the Devasthan could not be the evidence of the respondents' title nor any title vested in them since the donation was without the authority of law and illegal. He had made out a good case before the Reference Court but which was not considered while rendering the findings and

the Reference Court had arrived at a conclusion in the respondents' favour. The judgment of this Court was therefore liable to be reviewed on account of all these obvious errors on the face of the record and the appeal had to be allowed in his favour.

5] Shri R. Menezes, learned Advocate came to be heard on the applicant's behalf who submitted that he claimed right through Babul Zomon Naik unlike the respondents who denied their nexus with Babul Zomon Naik. No Caste Certificate in respect of the applicant or the respondents was considered by this Court thereby reflecting a clear error on the face of the record. This Court failed to realise that the number of documents was not relevant but the contents thereof were relevant to decide the Appeal. There was no basis to reject his case. Besides, the Gift Deed could not confer any title on the respondents and this Court had not considered the Inventory Proceedings and the other documents and hence, it was a fit case to Review the judgment and allow the Appeal.

6] Shri S.M. Usgaonkar, learned Senior Counsel on behalf of the respondents submitted that the Reference was decided by the learned Reference Court in the respondents'

favour and the High Court in Appeal had dismissed the applicant's Appeal. This was merely a backdoor entry to correct the judgment of this Court by review which was not maintainable and as the scope of review was very limited. He relied in *Ms. Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh* [AIR 1964 SC 1372], *Smt. Meera Bhanja Vs. Smt. Nirmala Kumar Chouhury* [AIR 1995 SC 455] and *Kamlesh Verma Vs. Mayawati and others* [(2013) 8 SCC 320]. The grounds urged in the Review Petition were without any basis. The application was without merit and frivolous and this Court had considered all the aspects while passing the Appellate judgment. No case whatsoever was made out for a Review and hence, the application had to be dismissed.

7] In *M/s.Thungabhadra Industries (supra)*, the Hon'ble Apex Court brought about a distinction from a mere erroneous decision to an error apparent on the face of the record and observed that this distinction was 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. Where without any elaborate arguments 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.

8] In Meera Bhanja (supra), the Hon'ble Apex Court held that the approach of the Division Bench dealing with the review proceedings clearly showed that it had overstepped its jurisdiction under Order XLVII, Rule 1 CPC by merely styling the reasoning adopted by the earlier Division Bench as suffering from a patent error. It would not become a patent error or error apparent in view of the settled legal position. An error apparent on the face of the record means an error which strikes 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. In view of the settled legal position, Their Lordships quoted the observations in Satyanarayan Laxminarayan Hegde Vs. Mallikarjun Bhavanappa Tirumale [AIR 1960 SC 137] where it was observed that "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”.

9] In Kamlesh Verma (supra), Their Lordships of the Apex Court considered the propositions culled out in Thungabhadra Industries and Meera Bhanja (supra) and held that under Order XLVII 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 powers of review under Order XLVII Rule 1 CPC. In exercise of such jurisdiction, 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’. An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of

inadvertence. The power of review can be exercised for the correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review.

10] A cursory perusal of the judgment under review reveals that this Court had considered the case of the parties about they belonging to different castes, that Babul Zomon Naik belonged to the Kshatriya Maratha Caste and so too the Gaonkar family, considered their rival claims for the allotment of the property in the Inventory Proceedings apart from the pleadings qua the acquisition of right under the decree in the Civil Suit no.4595 of 1892 as also the Inventory Proceedings 3/2000/C relating to the property bearing the Inscription and Description No.9056. This Court had duly considered the contentions of Shri Menezes, learned Advocate for the applicant vis-a-vis his right pressed through Shri Babul Zomon Naik and the caste to which he belonged apart from the contention of Shri Usgaonkar, learned Senior Counsel for the respondents and in that view of the matter and on considering the judgment of the Reference Court clearly held that there was no evidence on record to show that the survey entries were challenged by the applicant herein at any time. The learned

Single Judge had made a due reference to the document of the Inscription and Description, the Official gazette pursuant to which the defined area was donated to the Devasthan and clearly held that the respondents had produced the relevant documents in support of their case and on that premise held that the impugned judgment and award was in accordance with the settled principles of law and did not justify any interference in Appeal.

11] The grounds urged by Shri Menezes, learned Advocate for the applicant was primarily to recanvass his case which was heard by this Court and decided against him on a consideration of the evidence and the documents on record. The purpose of a review is not to reassess and reappraise the evidence and the documents but only to deal with errors which are apparent on the face of the record without having to delve deeper into the records to find out what was intended and what was decided by the Court. The scope of review is very limited and which is sought to be enlarged by the present application of a rehearing. Therefore, in the absence of any merit, the application does not lie and is therefore dismissed.

NUTAN D. SARDESSAI, J.