

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**CM Nos.12241-42-C of 2016 in
R.A. No.111-C of 2016(O&M) in
RSA No.694 of 2016
Date of decision :28.11.2016**

Garja Singh and others

.....Petitioners

Versus

Ram Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Arun Jain, Sr. Advocate
with Mr. Amit Jain, Advocate
for the petitioners.

DARSHAN SINGH, J. (Oral)

CM No.12241-C of 2016

This application has been filed under Section 5 of the Limitation Act for condonation of delay of 131 days in filing the Review Application.

Heard.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 131 days in filing the Review Application is hereby condoned.

R. A. No.111-C of 2016(O&M) in RSA No.694 of 2016

This application has been moved by the applicants-appellants under Order 47 Rule 1 of the Code of Civil Procedure, 1908 (for short 'CPC') for seeking the review of the judgment passed by this Court on 31.03.2016, whereby the RSA No. 694 of 2016 filed by the applicants-appellants was dismissed in *limine*.

2. As per averments in the application, the appellants preferred the Special Leave petition No. 14626/2016 in the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 12.08.2016 was pleased to grant the liberty to the applicants-appellants to approach this Court by way of the review petition. It is further pleaded that the learned trial Court in the judgment dated 15.02.1992 has held that if any *pacca* structure has been raised by either of the parties, the same would be kept intact as far as possible while finally partitioning the land and passing the final decree. The applicants-appellants have also moved an application under Order 41 Rule 27 CPC before this Court for placing on record the order dated 03.06.1988 passed by the Assistant Collector Ist Grade, Kharar in case No. 4/87. It transpires that the copy of the said order was produced in Civil Suit no. 319 of 1988 and was exhibited as Ex.P-6. The effect of the said order should be examined. The applicants-appellants have also placed on record the photograph of the property in dispute for reference and perusal of this Court. It is further pleaded that the Assistant Collector Ist Grade, Kharar on 03.06.1988 has held that in the area in dispute not even an inch of area was vacant. The claim of the plaintiffs-respondents was totally misconceived and cannot be said to be *bona fide*. It is further pleaded that even in the proceedings leading to the passing of the order dated 03.06.1988 by Assistant Collector Ist Grade, Kharar, the plaintiffs-respondents have opted for an area away from the road. Now, they are estopped to challenge their stand. It is further pleaded that the Courts below have failed to consider the specific objections raised with regard to the construction and for complying with the preliminary decree and the arguments that possession of the applicants-appellants could not be disturbed has been illegally rejected. In

fact, the possession of the applicants-appellants was sought to be substantially disturbed and even the construction raised by them was sought to be given to the plaintiffs-respondents, which was in complete violation of the preliminary decree. The report submitted by the Local Commissioner in compliance of the order dated 18.05.2015 was not in consonance with the preliminary decree. The applicants-appellants have raised the objection that the Local Commissioner has bifurcated the property in 11 units and has assessed the value of the existing construction as per parameters of PWD, whereas the value of the existing construction was required to be assessed as per its market value. Even while assessing the value as per parameters of PWD, the Local Commissioner has not included the value of labour and transportation etc. It is further pleaded that the learned Courts below have erred in law and on facts in assuming that there exists only *jhuggies* at the spot and the permanent construction was the recent one. It is further pleaded that in the application for partition before the Assistant Collector Ist Grade, Kharar in para no.3 of the application, the plaintiffs-respondents have pleaded that they be given the area towards north shown in the red colour in the plan attached therewith, which was shown to be under his possession. Whereas, the final decree sought to change the portions was thus contrary to the stand of the plaintiffs-respondents. The plaintiffs-respondents are barred by the principle of estoppel and acquiescence to raise this plea. Thus, it is pleaded that the aforesaid grounds constitute sufficient grounds for review of the judgment dated 31.03.2016 passed by this Court in RSA No. 694 of 2016.

3. I have heard Mr. Arun Jain, Senior Advocate assisting by Mr. Amit Jain, Advocate, learned counsel for the applicants-appellants

and have carefully perused the record.

4. Initiating the arguments, learned counsel for the applicants-appellants contended that the applicants-appellants have preferred the Special Leave to appeal No. 14626 of 2016, which has been disposed of by the Hon'ble Apex Court vide order dated 12.08.2016. The applicants-appellants were given liberty to approach this Court by way of review petition. He contended that there are sufficient grounds for the review of the judgment dated 31.03.2016 passed by this Court. He contended that the learned trial Court while passing the preliminary decree vide judgment dated 15.02.1992 has categorically mentioned that if any *pacca* structure has been raised by either party, the same would be kept intact as far as possible while finally partitioning the land and passing the final decree. He contended that these observations were recorded by the learned trial Court keeping in view the fact that the construction raised by the applicants-appellants was in existence.

5. He further contended that Annexure A-30 is the copy of the order dated 03.06.1988 passed by the Assistant Collector Ist Grade, Kharar in application for partition between the parties. He contended that in the order, the Assistant Collector Ist Grade, Kharar has categorically mentioned that at the spot it was found that in this khasra number, the parties have given *Abadi* on rent and at the spot in this khasra number not even an inch of area was vacant. He contended that this order also shows that the construction was in existence even prior to the date of institution of the application for partition before the Assistant Collector Ist Grade, Kharar. He further contended that in the partition proceedings, the plaintiffs-respondents have claimed the area away from the road as they were in

possession thereof. Now, they want to change their stand. All these questions have not been properly taken into consideration by this Court while passing the judgment dated 31.03.2016. Thus, he contended that there are sufficient grounds for the review of the judgment dated 31.03.2016.

6. I have duly considered the aforesaid contentions.

7. The Hon'ble Apex Court in case **S. Bagirathi Ammal Vs. Palani Roman Catholic Mission 2008(1) R.C.R.(Civil) 290** has laid down that the review is permissible on the following grounds:-

(1) from the discovery of new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when the decree was passed.

(2) On account of some mistake.

(3) Where error is apparent on the face of the record or is a palpable wrong.

(4) any other sufficient reason.

(5) If any of the conditions satisfy, the party may apply for a review of the judgment or order of the Court which passed the decree or order.

(6) The provision also makes it clear that 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.

(7) 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. In other words, it must be an error of inadvertence.

(8) When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the Court.

(9) Under the guise of review, the parties are not entitled re-hearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set at right by reviewing the order.”

8. In case **Kamlesh Verma Vs. Mayawati and others 2013(4) R.C.R (Civil) 75**, the Hon'ble Apex Court had an occasion to observe regarding the interpretation of words “any other sufficient reason” and it

was laid down as under:-

“The words any other sufficient reason has been interpreted in *Chhajju Ram vs. Neki, AIR 1922 PC 112* and approved by this Court in *Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulouse Athanasius & Ors., (1955) 1 SCR 520*, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India Vs Sandur Manganese & Iron Ores Ltd. & Ors., 2013(3) Recent Apex Judgments (R.A.J) 436: JT 2013 (8) SC 275.*”

9. In this judgment, the Hon'ble Apex Court has further laid down that the review will not be maintainable in the following circumstances:-

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.

10. The same legal position has been reiterated by the Hon'ble Apex Court in case **Union of India Vs. Sandur Manganese and Iron Ores Ltd. And others 2013(4) Law Herald (SC) 2669** and the Division Bench of this Court in cases **M/s Krishan Chand Ganesh Dass Vinay Kumar and Company Vs. Union Territory, Chandigarh and others 2014(4) Law Herald 3408** and **Virender Singh Malhan Vs. Haryana Urban Development Authority and others 2015(3) R.C.R (Civil) 751**. Thus, the legal position emerges from the afore cited authoritative judicial precedents

that review of a judgment is only permissible when there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant that such important matter or evidence could not be produced by the applicant at the time when the judgment/decreed was passed and that on account of some mistake or error apparent on the face of record or any sufficient reason as interpreted by the Hon'ble Apex Court in case **Kamlesh Verma Vs. Mayawati and others (supra)**. The review of the judgment or order will not be permissible where there are minor mistakes of inconsequential import, the repetition of arguments already considered and rejected will not be enough to reopen the concluded adjudication. The review proceedings cannot be equated with the rehearing of the case. The review is by no means an appeal in disguise whereby an erroneous decision is required to be re-heard and corrected. Possibility of two views on the subject is also not a ground for review. The review is also not permissible where the alleged error apparent on the face of record has to be fished out and searched from the record. The appreciation of the evidence on record is fully within the domain of the appellate Court and it cannot be permitted to be advanced in the review petition.

11. Keeping in view the above principles of law, we have to consider as to whether the applicants-appellants have been able to make out the case for review. In nutshell, at the time of arguments, learned counsel for the applicants-appellants have sought the review of the judgment dated 31.03.2016 passed by this Court on the ground that there was observations in the preliminary decree dated 15.02.1992 that if any *pacca* structure has been raised by either party, the same would be kept intact as far as possible

while passing the final decree. Secondly, in the order dated 03.06.1988 passed by Assistant Collector Ist Grad, Kharar, it has been mentioned that not even an inch of the area was vacant in this khasra number and the parties have given *Abadi* on rent. Thirdly, it was contended that in the partition proceedings before Assistant Collector Ist Grade, Kharar, the plaintiffs-respondents have sought the land away from the road and now they are estopped to change their stand. The perusal of the judgment dated 31.03.2016 passed by this Court make the position evident that all these points were already considered and dealt with in detail. The relevant portion of the judgment dated 31.03.2016 reproduced below:-

“17. The purpose of partition of the suit property between the co-sharers is to allot the separate portion of the land to the co-sharers taking into consideration the value of the land and the share of the parties, so that all the co-sharers get equal share in the valuable piece of land as well as the inferior quality of the land. There should be no gainer or looser in partition of the joint property. The interest of all the co-owners should be taken care of.

18. At the time of passing the preliminary decree, it was only mentioned that if any *pacca* structure has been raised by either party, the same would be kept intact as far as possible while finally partitioning the land and passing the decree. No doubt, while passing the final decree for partition, the possession of the respective parties is to be respected only to the extent possible in the manner without causing any prejudice to the rights of the other co-sharers. The appellants are claiming the entire land adjoining the main road, which is valuable piece of land simply on the ground that they were in possession of that portion and has also raised the huts therein. The said plea is not permissible under law, because even a co-sharer out of possession is entitled to the share in every inch of the land, otherwise a co-sharer out of possession or in possession of lesser share or inferior quality of the property would never be able to bear the fruits by getting the joint property partitioned. The learned Courts below have rightly relied upon case **M.L. Subbaraya Setty (dead) by L.Rs and others Vs. M.L.Nagappa Setty (Dead) By L.Rs and Ors 2002(4) SCC 743**, wherein it has been laid down as under:-

“We may also clarify that the direction that the present possession of the

parties shall be respected as far as possible also does not mean that if the plaintiff is not in possession of any immovable property and the same are in possession of the defendants, he could not be allotted the immovable property even though he is so entitled as per his share. If that was so, the words "as far as possible" in the said direction would become redundant. When the Court directs that the present possession of the parties shall be respected, it means that if partition of the property is to be effected, then as far as possible the person in possession of a property should be allowed to retain it by equalization of share but it does not mean that a person out of possession of all immovable properties should not be allotted any part of the immovable property whatsoever."

19. The learned First Appellate Court has also mentioned on the basis of the report furnished by Sh.Jaivir Singh Rangila, Advocate, who was appointed as Local Commissioner by the learned Civil Judge, Kharar that new construction has come up in the shape of four shops abutting the main road. The learned First Appellate Court has further observed that the appellants cannot be rewarded for their own wrong as they have raised the construction with impunity during the pendency of the litigation. Consequently, the existence of construction will not clothe the appellants with the right to claim that very portion.

20. The final decree for partition has been passed by the learned Courts below taking into consideration the reports of the Local Commissioner, which covered all the aspects regarding the location of the land, share of the parties, commercial angle, existence of the construction, its nature and value. The decree for final partition has been passed as per the mode of partition suggested in the site plan mark 'A' by Tehsildar, Kharar, the Local Commissioner. The plaintiffs-respondents were held entitled for separate possession of the portion shown in brown colour and the defendants-appellants were held entitled for separate possession of the portion shown in green colour in the said site plan as per the share of the parties.

The portion reproduced above shows that the plea raised by learned counsel for the applicants-appellants with respect to the observations in the preliminary decree and existence of the construction have been duly considered. Learned counsel for the applicants-appellants could not point out that in the present suit/plaint, the plaintiffs-respondents have claimed the portions situated away from the road. Rather, they have

sought the partition of the entire suit land as per their shares by meets and bounds.

12. The observations of the Assistant Collector Ist Grade in his order dated 03.06.1988 is no ground to ignore the findings recorded by the Courts below on appreciation of the evidence of parties and the reports of the Local Commissioner in the regular suit.

13. So, there is no error apparent on the face of record justifying the exercise of the review of the judgment dated 31.03.2016 passed by this Court. It is also not the case of the applicants-appellants that there is discovery of any new and important matter or evidence which, after the exercise of due diligence was not within their knowledge and could not be produced. There is no “any other sufficient reason” analogous to those specified in Order 47 Rule 1 CPC to invoke the jurisdiction of review. In fact, on the basis of the same arguments which were already considered and dealt with, the applicants-appellants wants the rehearing of the appeal, which is not permissible by way of review. If, there is any error in the findings recorded by this Court, the remedy is by way of appeal and not by seeking review thereof.

14. Thus, the present application has no merits and the same is hereby dismissed.

28.11.2016

S.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No