

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION (CIVIL) NO.181 OF 2019
IN SA/680/2014**

Jaiprakash Tulshiram Bhujal and another

... Versus ...

Sanjay Gopal Baag and others

...

Mr. S.S. Kulkarni, Advocate for the applicants

Mr. P.S. Shendurnikar, Advocate for the respondent No.1

Mr. D.B. Pokale, Advocate for the respondent Nos.2 to 5

...

CORAM : SMT. VIBHA

KANKANWADI, J.

DATE : 27th AUGUST, 2019

ORDER :

1 Present review application has been filed by the respondent Nos.1 and 2 in the Second Appeal. The said Second Appeal was arising out of Judgment and Decree passed by learned Principal District Judge, Jalgaon on 20.08.2014 in Regular Civil Appeal No.189/2008, wherein the Judgment and Decree passed by learned Civil Judge Junior Division, Pachora on 08.07.2008 in Regular Civil Suit No.6/2005, was under challenge. The First

Appellate Court had partly allowed the appeal. The decree passed by the learned Trial Judge was set aside to the extent of holding the sale deed in favour of the appellant, who was the original defendant No.3, as illegal and granting 1/3rd share to plaintiff No.1 and defendant Nos.1 and 2. It was also held that the plaintiff Nos.2 to 4 and defendant Nos.1 and 2 are entitled to partition and separate possession to the extent of 1/5th share in the suit property. As aforesaid, the said decree was under challenge in the Second Appeal. This Court by Judgment and order dated 08.04.2019 disposed of the Second appeal as not admitted, since no substantial questions of law were arising.

2 Heard learned Advocate Mr. S.S. Kulkarni for the applicants, learned Advocate Mr. P.S. Shendurnikar for the respondent No.1 and learned Advocate Mr. D.B. Pokale for the respondent Nos.2 to 5.

3 It has been vehemently submitted on behalf of the revision applicants that they had filed Civil application No.15051 of 2018 praying for their transposition as appellants in the Second Appeal and without deciding that application in advance i.e. prior to the decision of the Second Appeal, the said application has been

disposed of together with the Second Appeal, stating that since Second Appeal itself is not admitted, the application stands disposed of. It has been submitted that the said application ought to have been heard first and after their transposition the Second Appeal ought to have been decided. The facts were reiterated, which were in dispute in the litigation and it was submitted that the modification in the decree by the learned First Appellate Court and calculation of 1/5th share to the revision applicants from 1/3rd, which was calculated by the learned Trial Court, was wrong. It is stated that since there is error apparent, the review application deserves to be allowed.

4 Per contra, the learned Advocate appearing for respondent No.1 strongly opposed the application and submitted that since the present review applicants were also heard in the matter, they cannot seek review on some flimsy grounds. It was not necessary to transpose them as appellants and they could not put forward their case even as respondents.

5 The scope of the review petition is required to be considered. In **Vinay Sharma & another Vs. State (NCT of Delhi) & others [(2018) 8 SCC 186]**, it has been observed that

"Power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications." Here, in this case, the points which have been raised by the review applicants can be termed as repetition of old and overruled arguments.

Further, in **Haryana State Industrial Development Corporation Limited Vs. Mawasi & others [(2012) 7 SCC 200]**, it has been held that *"Roving inquiry or de novo hearing in guise of review is impermissible."*

Reliance was placed in this decision, in the case of **Thungabhadra Industries Ltd. Vs. Govt. of A.P. [AIR 1964 SC 1372]**(Three Judges Bench), wherein it has been observed thus :-

"11. ... A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that 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."

Further note was taken in respect of the decision in

Parsion Devi Vs. Sumitri Devi [(1997) 8 SCC 715], wherein it

has been observed thus :-

"9. ... 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 ... A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

The same ratio is reiterated in **Vikram Singh alias Vicky Walia & another Vs. State of Punjab & another [(2017) 8 SCC 518]**, wherein it has been held that *"Review cannot be made on those grounds which were already urged during appeal."* In this case, the term *"an error apparent on the face of the record"* has been explained with the help of earlier pronouncement of the Hon'ble Apex Court in *Kamlesh Verma Vs. Mayawati [(2013) 8 SCC 320]*, wherein it was held that *"an error which is not self-evident and has to be detected by a process of reasoning is not an error apparent on the face of the record."* The ratio laid down in *State of West Bengal & others Vs. Kamal Sengupta & another [(2008) 8 SCC 612]* can be taken wherein it has been observed thus :-

"21. At this stage, it is apposite to observe that where a review is sought on the ground of discovery of new matter or

evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

22. The term "mistake or error apparent" by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."

6 After taking note of the legal position regarding the scope of the review applications, it can be seen, that Civil Application No.15051 of 2018 was filed by the respondents for transposition. It is stated in the review application, that when the Second Appeal was listed for admission on 08.04.2019, at that time the Advocate for the applicants was on his legs before another Court. Yet, it is to be noted that the present review applicants, who were the original defendant Nos.1 and 2, had not filed their written statement before the Trial Court. Only the

original defendant No.3 was contesting party, who had filed the written statement. After the decision by the First Appellate Court, the respondent Nos.1 and 2 i.e. the present review applicants, had not filed any cross appeal. They had merely filed the application for transposition, which was in fact, absolutely not necessary. They were the parties to the Second Appeal and they could have made their submissions, though arrangement was made by the learned Advocate appearing for the review applicants either to get adjournment or to keep the matter back for some time. Under such circumstance, the matter proceeded without his presence and it appears from the review petition, that the review applicants wanted to raise same point, which the appellants-original plaintiffs had raised. Therefore, it was not necessary to deal with the application for transposition first, and then the Second Appeal should be decided, it could have even been decided simultaneously and accordingly it has been decided simultaneously. This Court by a detail order had come to the conclusion, that no substantial questions of law as contemplated under Section 100 of the Code of Civil Procedure, 1908, have been shown and therefore, the Second Appeal was disposed of as not admitted, and taking into consideration the points raised in the

review petition there could not have been a different decision.

7 Thus, taking into consideration the above said legal position, it can be said that the points which have been raised by the review applicants are not within the ambit of the powers of review, which can be exercised under Section 114 read with Order XLVII of the Code of Civil Procedure, 1908.

8 There is absolutely no merit in the present review application. Hence, the review application is dismissed.

(Smt. Vibha Kankanwadi, J.)

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