

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****REVP No. 252 of 2019**

1. Smt. Kanti Mishra W/o Shri Badri Prasad Mishra Aged About 83 Years R/o Nayapara, Raipur, Tahsil And District - Raipur, Chhattisgarh.
2. Sameer Mishra S/o Shri Badri Prasad Mishra Aged About 48 Years R/o Nayapara, Raipur, Tahsil And District - Raipur, Chhattisgarh.
3. Durgesh Mishra S/o Shri Badri Prasad Mishra Aged About 46 Years R/o Nayapara, Raipur, Tahsil And District - Raipur, Chhattisgarh.
4. Smt. Seema Shukla D/o Shri Badri Prasad Mishra Aged About 52 Years W/o Shri Neel Kanth Shukla. R/o Pandaria, Tahsil Pandaria, District - Kawardha, Chhattisgarh. (Appellants Nos. 5 And 6 Dinesh And Krishna Bai S/o And W/o Kedar Prasad Mishra Have Died During The Pendency Of Appeal With Cause Of Action Surviving And Represented By Remaining Appellants.)

----- Petitioners**Versus**

1. Rajendra Shankar Shukla S/o Shri Ram Awatar Shukla, Aged About 78 Years R/o Malviya Road, Raipur, Tahsil And District - Raipur Chhattisgarh.
2. Smt. Pratibha Shukla W/o Rajendra Shankar Shukla, Aged About 72 Years R/o Malviya Road, Raipur, Tahsil And District - Raipur Chhattisgarh.
3. Ranjana Shukla D/o Rajendra Shankar Shukla Aged About 58 Years R/o Malviya Road, Raipur, Tahsil And District - Raipur Chhattisgarh.
4. Ekta Deepa Shukla W/o Rohit Shukla , Aged District - Raipur Chhattisgarh.

5. Rahul Shukla S/o Rajendra Shankar Shukla Aged About 47 Years R/o Malviya Road, Raipur, Tahsil And District - Raipur Chhattisgarh.
6. Smt. Shail Kumari Shukla W/o Ratnesh Kumar Shukla Aged About 53 Years R/o Azad Nagar, Bilaspur, Tahsil And District - Bilaspur Chhattisgarh.
7. Jameel Saifi S/o Shri Abdul Jabbar Aged About 72 Years Hospital Ward, Near Amar Deep Talkies, Raipur, Tahsil And District Raipur Chhattisgarh. (Respondent / Defendant Ex Parte In Suit) Respondent No. 7 / Defendant Sardar Fauja Singh, Ex Parte In Suit, Has Died During Pendency Of The Second Appeal.

---- Respondents

Application for review of the order dated 14.11.2019 passed in SA No. 782 of 1998

By Circulation in Chamber

S.B.: Hon'ble Mr. Justice Prashant Kumar Mishra

13/02/2020

1. The matter is taken up for consideration in the chamber under provisions of sub-rule (2) of Rule 90 under Chapter VI of the High Court of Chhattisgarh Rules, 2007.
2. The review petition has been preferred by the petitioners to seek review of the judgment dated 14.11.2019 passed in SA No.782 of 1998 on the ground that there is no evidence of Rajendra Shankar Shukla being heir of Late Brijrani Bai except opening line of his deposition that "She was his Buwa" - paternal aunt without particulars of father and brothers of Late Brijrani Bai. Such statement does not prove him heir of Brijrani Bai hence the concurrent findings of both

the Courts below are perverse in the absence of pleading and proof thereof. According to the petitioners, the said Will and heir-ship of Rajendra Shankar Shukla not having been pleaded and proved the eviction suit between landlord and tenant has abated on death of Late Brijrani Bai.

3. On going through the record of second appeal, it is evident that this Court after hearing learned counsel appearing for both the parties decided the issue by delivering a detailed judgment and by placing reliance upon the decisions rendered by the Supreme Court. Moreover, no question of law was framed, on the point now raised, at the time of admitting the second appeal. It is important to bear in mind that the suit for eviction was filed on 14.11.1971 i.e., about 48 years ago.
4. There is no other ground pointed out by the petitioner showing any manifest error on the record and has not further brought into the notice, any new facts, which could not be produced earlier despite diligent efforts made by the petitioner. It is well settled principles of law that 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 of the Code of Civil Procedure.
5. It appears that the petitioners by presentation of this review petition seek an opportunity to argue the entire case afresh

on merits under the garb of the review petition, which is not permissible and tenable in law.

6. It is well settled principle of law that under the garb of review petition, the petitioner should not be permitted to argue the entire case afresh, which would amount to convert the review petition into an appeal and the same is not sustainable in law. (See: Meera Bhanjan v. Smt. Nirmal Kumar Chowdhary, AIR 1995 SC 455, Lily Thomas etc. v. Union of India and others, AIR 2000 SC 1650, Ajit Kumar Rath v. State of Orissa and others, AIR 2000 SC 85, Government of T.N. & Others v. M. Ananchu Asari and others, (2005) 2 SCC 332, and Kerla State Electricity Board v. Hitech Electrothermicism & Hydropower Ltd. and others, (2005) 6 SCC 651.

7. As a sequel, the review petition, *sans substratum* is liable to be and is hereby dismissed.

SD/-
(Prashant Kumar Mishra)
Judge

Ayushi