

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

MISC. CIVIL APPLICATION NO. 305/2022
IN
SECOND APPEAL NO. 119/2021

Ramshankar S/o Jaipal Patle (Dead) through legal heirs Sheela Wd/o Ramshankar
Patle and others

Vs.

Bayatrabai W/o Dhanulal Chouhan

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri A.S. Mardikar, Advocate for applicants
Shri S.G. Karmarkar, Advocate for respondent

CORAM : SMT. M.S. JAWALKAR, J.

DATE : 25/08/2022

The present application is filed for review of order dated 29/04/2017, whereby second appeal came to be dismissed. The appellants are the original defendants and preferred Second Appeal No.119/2021, challenging the judgment and decree passed by District Judge – 1, Gondia in Regular Civil Appeal No. 69/2017, arising out of judgment and decree dated 29/04/2017, passed by the Civil Judge, Junior Division, Tirora in Regular Civil Suit No. 14/2011. The suit was filed by respondent, Bayatrabai who is the sister of the defendant Nos. 1 to 3. The defendant Nos. 4 and 5 are the children of Umashankar and defendant No.6 is the widow of deceased Umashankar. The suit is filed for partition of suit property mentioned in the schedule of

properties. The appellant/defendant have resisted the claim by claiming that some of the properties are purchased by Jaipal Patle, who died after execution of partition deed. It is contended by the applicant that properties being self acquired properties there is no question of partition as the plaintiff was already compensated by giving money for purchase of five acre land and 100 gm gold. It is submitted that the then learned Counsel could not point out from the deposition that the properties are part of partition deed and they are not ancestral but self acquired, as copies of deposition were not available then. The learned Counsel for the applicants relied on judgment passed by the Hon'ble Supreme Court in *Board of Control for Cricket, India and another Vs. Netaji Cricket Club and other*, reported in *2005 AIR SCW 230*.

2. Learned Counsel for non applicant vehemently opposed the application and submitted that there is no ground whatsoever is made out for review the order passed by this Court.

Learned Counsel for non applicant further submitted that there is no manifest error in the order which would result in miscarriage of justice and undermines it's soundness. In support of his contention he relied on *S. Madhusudan Reddy Vs. Narayana Reddy and others*, reported in *2022 SCC Online SC 1034*, wherein it is held as

under :

“19.

A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. ... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.’

20. *In Parsion Devi and Others v. Sumitri Devi and Others 12, stating that an error that is not self-evident and the one that has to be detected by the process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise the powers of review, this Court is held as under:”*

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9. Under Order 47 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 power of review under Order 47 Rule 1 CPC. In exercise of this jurisdiction under Order 47 rule 1 CPC 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’”.

3. I have gone through the order passed on 29/04/2022. After considering the concurrent finding of the

Court, this Court elaborately considered rival contentions of the parties and concluded that there is no substantial question of law involved in the present appeal. Even at the time of hearing of this application. I have perused the copies of deposition placed on record by the applicant. It is submission of learned Counsel for the applicant that the plaintiff has admitted that Jaipal has received amount of Rs.66,98,000/- of land acquisition. However, this cannot be the admission by the plaintiff that property was self acquired. Both the lower Courts have rightly appreciated the evidence on record and as such, there is no ground made out by the appellant to review the order passed by this Court.

4. Judgment of the Hon'ble Supreme Court in ***Board of Control for Cricket, India (supra)*** relied upon by the appellant is clearly distinguishable on facts from the facts involved in this matter. Ultimately, in this matter also Hon'ble Apex Court held that:

“Section 114 of the Code empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit. Order 47, Rule 1 of the Code provides for filing an application for review.

Such 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. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

5. As such, there is no new discovery of fact and it is not the case that important piece of evidence is not considered or there is apparent error in the order passed by this Court. As such, review application is dismissed. No order as to costs.

(SMT. M.S. JAWALKAR, J.)

Jayashree..