

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Siddhartha Roy Chowdhury

RVW 252 of 2022

in

FA 410 of 2009

Karan Chabria

vs.

Yashwant Chabria & Ors.

For the Review Applicant	: Mr. Surojit Nath Mitra, Sr. Adv. Mr. Varun Kedia, Adv. Ms. Aditi Kumar, Adv.
--------------------------	--

For the Respondent Nos. 1&2	: Mr. Ashok Kr. Banerjee, Sr. Adv. Mr. A.K. Routh, Adv. Ms. Anindita Auddy (Das), Adv.
-----------------------------	--

For the Respondent No. 3	: Mr. Sib Sankar Das, Adv.
--------------------------	----------------------------

Hearing concluded on	: 2 nd May, 2023
----------------------	-----------------------------

Judgement on	: 2 nd May, 2023
--------------	-----------------------------

Siddhartha Roy Chowdhury, J.: This memorandum of review is virtually an expression of displeasure of the defendant-appellant over the judgement passed by this Court in FA 410 of 2009, though the petitioner is proclaiming that he wants to bring to the notice of this Court errors that crept in while passing the judgement in FA 410 of 2009, which is apparent on the face on record.

It is further contended that because of discovery of important evidence, which the petitioner despite due diligence could not bring to the

notice of this Court at the time of hearing or before the order on 19th September, 2022 was passed, the petitioner is making an innocuous prayer before the Court to revisit the judgement pronounced on 19th September, 2022 but the intention of the petitioner appears to be quite different from what has been candidly adverted.

Challenging the preliminary decree passed in a suit for partition being Title Suit No. 19 of 2005 by the learned 1st Court of Civil Judge, Senior Division at Alipore, an appeal and cross-appeal are preferred by one Charan Kumar Chabria. Charan Kumar Chabria and Karan Kumar Chabria were the joint owners of the property situated at 34/1 'Y' Ballygunge Circular Road, Kolkata-700019 in question having 50% share each. Karan Kumar Chabria executed the deed of gift in favour of defendant no. 1 and 2 transferring thereby the first floor and second floor of the building to them. Challenging the said transfer, it is contended that defendant no. 3 being a co-owner had no authority to transfer the entire first floor and second floor by executing deed of gift in favour of defendant no. 1 and 2. Therefore, no right title interest could be said to have been transferred to or acquired by the defendant no. 1 and 2 by virtue of the deed of gift. Challenging the legality and propriety of the deed of gift Charan Kumar Chabria filed a suit seeking, *inter alia*, declaration of title of plaintiff and defendant no. 3 to the extent of 50% of each over the suit property with further declaration that the deed of gift dated 23rd April, 2002 executed by defendant no. 3 is illegal, void and ineffective and not binding upon the plaintiff.

The defendant no. 1 and 2 in their statement contended, *inter alia*, that the property was purchased by the father of the parties to the

proceeding in the name of plaintiff and defendant no. 3. After the demise of their father an agreement was arrived at by and between the brothers and in terms of the said agreement defendant no. 3 executed the deed of gift and relinquished his right title interest in favour defendant no. 1 and 2. Defendant no. 3, however, in his written statement stated that he executed the deed but he was not allowed to carry his mind while executing the deed. It was prepared by Samiran Chakraborty, Advocate of defendant no. 1 and 2. Had he been told about the purport of the deed, defendant no. 3 would not have executed the said document. From the attending facts of the case it is admitted that the defendant no. 3 was one of the co-owners in respect of the suit property. Though he took the plea in his written statement that he did not carry his mind at the time of execution of the deed of gift and he had no opportunity to go through the said deed of gift prior to execution of the same, but there is nothing to indicate that the donor defendant no. 3 ever challenged the deed of gift before any Court of law or took any step to get the document cancelled. Thus, the preliminary decree passed by learned Trial Court was affirmed keeping in mind that the co-owner has right to transfer his share in respect of undivided property. It is obvious in the preliminary decree declaration is made in respect of share of the respective parties. The question of allotment, of course comes subsequent thereto in the proceeding for drawing up final decree.

It is contended by the petitioners that the Court while deciding the appeal did not appreciate the intent to which the word 'bequeathed' was used instead of the word 'convey'. This Court failed to appreciate the fact that the gift was never accepted by defendant/respondent no. 1 and

erroneously assumed the acceptance of gift. The defendant no. 1 and 2 have been possessing the property since prior to execution of deed of gift. The intention of the donor to gift the property is manifestly absent in the document. This Court failed to appreciate the fact that interest over land has not been transferred and re-written the gift deed. The deed of gift in absence of at least two attesting witness, cannot be held to be valid. There is error apparent on record because the principles of Section 91 and 92 of Evidence Act, 1872 have not been followed.

Mr. Surojit Nath Mitra, learned Senior Counsel submits that for the purpose of making a gift of immovable property transfer must be effected by a registered instrument signed by or on behalf of donor and attested by at least two witnesses, which was not followed in the present case.

This issue was addressed by the Court at page 13 of the judgement. We would like to quote relevant sentence from the judgement sought to be reviewed:-

“There are only two witnesses in the deed of gift Samiran Chakraborty, advocate and other is Panchu Gopal, typist.”

With all humility we should say that while considering the appeal, this Court considered all these points, as taken by the petitioner, in the Review Application.

At the outset, we would like to revisit the provision of review as laid down under order XLVII Rule 1 of the Civil Procedure Code which goes herein under:-

“Order XLVII review

1. application for review of judgment.

(1) Any person considering himself aggrieved-

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
- (b) by a decree or order from which no appeal is allowed, or*
- (c) by a decision on a reference from a Court of Small Causes,*

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

By filing this review application the petitioner is inviting the Court to delve deep into the factual matrix in order to locate error. It is well settled principle of law that there are definitive limits to the exercise of the power of review. The power of review may be exercised to the discovery of new and important matter or evidence which after exercising of due diligence was not within the knowledge of the person seeking the review or could not be produced by him when the order was made; the power of review may be exercised where some mistake or error apparent on the face of record is found but it cannot be exercised on the ground that the decision was erroneous on merits.

The power of review should not be confused with appellate power. An Appellate Court is competent to correct errors committed by the Court subordinate thereto. In this regard, we can rely upon the judgement of Hon’ble Supreme Court pronounced in the case of **Thungabhadra**

Industries Ltd. vs. The Government of Andhra Pradesh reported in **AIR 1964 SC 1372** wherein Hon'ble Supreme Court held:-

“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.”

In **Satyanarayan Laxminarayan Hegde and Ors. vs. Millikarjun Bhavanappa Tirumale** reported in **AIR 1960 SC 137** Hon'ble Apex Court held:-

“An error which has to be established by long drawn process of reasoning, on points where there may be 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.”

In **Shri Ram Sahu (Dead) through LRS vs. Vinod Kumar Rawat & Ors.** reported in **(2020) 11 SCR 865** wherein Hon'ble Apex Court observed:-

“7. The dictionary meaning of the word “review” is “the act of looking, offer something again with a view to correction or improvement”. It cannot be denied that the review is the creation of a statute. In the case of [Patel Narshi Thakershi vs. Pradyumansinghji Arjunsinghji](#), (1971) 3 SCC 844, this Court has held that the power of review is not an inherent power. It

must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.

8. What can be said to be an error apparent on the face of the proceedings has been dealt with and considered by this Court in the case of *T.C. Basappa vs. T.Nagappa*, AIR 1954 SC 440. It is held that such an error is an error which is a patent error and not a mere wrong decision. In the case of *Hari Vishnu Kamath vs. Ahmad Ishaque*, AIR 1955 SC 233, it is observed as under:

“It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any clearcut rule by which the boundary between the two classes of errors could be demarcated.”

8.1 In the case of *Parsion Devi vs. Sumitri Devi*, (*Supra*) in paragraph 7 to 9 it is observed and held as under:

7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In *Thungabhadra Industries Ltd. v. Govt. of A.P.*, AIR 1964 SC 1372 this Court opined:

“What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an ‘error apparent on the face of the record’). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an ‘error apparent

on the face of the record', for there is a distinction which is 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."

8. Again, in *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170 while quoting with approval a passage from *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* (supra) this Court once again held that 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 CPC.

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 selfevident 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 the 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".

8.2 In the case of *State of West Bengal and Others vs. Kamal Sengupta and Anr.*, (2008) 8 SCC 612, this Court had an occasion to consider what can be said to be "mistake or error apparent on the face of record". In para 22 to 35 it is observed and held as under:

"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 selfevident 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.”

23. xxxxxx

24. xxxxxx

25. *In Hari Sankar Pal v. Anath Nath Mitter, 1949 FCR 36 a five Judge Bench of the Federal Court while considering the question whether the Calcutta High Court was justified in not granting relief to nonappealing party, whose position was similar to that of the successful appellant, held: (FCR p.48)*

“That a decision is erroneous in law is certainly no ground for ordering review. If the court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the court disposes of a case without advertting to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of Order 47 Rule 1, Civil Procedure Code.”

The petition under consideration, as we have already pointed out is nothing but a latent expression of grievances over the decision already taken by this Court while disposing of the appeal being FA 410 of 2009 but this would be the province of a Court of appeal. We cannot sit in appeal over our own judgement.

Under such circumstances, we do not find any merit in the application for review as filed by the appellant and we dismiss the same with cost of Rs. 25,000/- to be paid to the Secretary, Calcutta High Court Legal Services Committee within two weeks from date.

Urgent Photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

I agree

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)