

HON'BLE SRI JUSTICE K. LAKSHMAN

Review I.A. No.3 OF 2024

IN

WRIT PETITION No.36753 OF 2022

ORDER:

Heard Sri Vedula Srinivas, learned Senior Counsel representing Smt. Vedula Chitralkha, learned counsel for the petitioners. Sri E.Ajay Reddy, learned Senior Counsel representing Sri E.Anisha Reddy, appearing for respondent Nos.16 and 18.

2. This application is filed under Order XLVII, Rule - 1 read with Section - 114 of CPC to review the order dated 28.04.2023 in W.P.No. 36753 of 2022 passed by this Court.

3. The petitioners filed the aforesaid writ petition challenging the inaction of respondents, more particularly, respondent No.3/Joint Collector in not considering the petition vide Case No.21003 of 2022, dated 06.08.2022 filed by them under Section 98 of the filed by the petitioner under Section - 98 of the Telangana Tenancy and Agricultural Lands Act, 1950 (for short, 'the Act, 1950') in seeking summary eviction of respondent Nos.5 to 18 and delivery of physical and vacant possession of land admeasuring Acs.4-26 guntas in Survey

No.98 of Madinaguda Village, Serilingampally Mandal, Ranga Reddy District in their favour.

4. Vide aforesaid order dated 28.04.2023, this Court dismissed the said writ petition holding that there are serious disputes with regard to the succession rights and the application filed by the husband of the 1st petitioner and father of the petitioner Nos.2 and 3 respectively under Section 37 of the Act, 1950 was dismissed. The application filed by them for issuance of 38-E Certificate was also dismissed. The said orders attained finality. The suit in O.S.No.123 of 2021 filed by Thandra Shiva Kumar Goud, the husband of petitioner No.1 and father of petitioner Nos.2 and 3 respectively is also pending. During pendency of the said suit and after the death of said Thandra Shiva Kumar Goud, the petitioners herein have executed an unregistered General Power of Attorney in favour of Mr. P. Ram Gopal Rao. The petitioners herein cannot invoke the provisions of Section - 98 of the Act, 1950 seeking to evict the respondents 5 to 18. This Court also considered the definition of the agricultural land in terms of Section - 2 (1) (a) (b) (c) of the Act, 1950. This Court also placed reliance on the principle laid down by the Apex Court in

Abdul Kareem v. Bashumiya¹ and Syed Jalal v. Targopal Ram Reddy².

5. Considering the entire material on record, this Court vide impugned order dated 28.03.2023 dismissed the writ petition.

6. Feeling aggrieved and dissatisfied with the said order, the petitioners preferred an intra-Court appeal vide W.A.No.199 of 2024 under Clause No.15 of Letters Patent. The petitioners sought permission for withdrawal of the said writ appeal with a liberty to file review petition. Vide order dated 25.10.2014, the said appeal was dismissed as withdrawn granting liberty to the petitioners to seek review of the order dated 28.04.2023.

7. The petitioner filed the present review application contending;

a) This Court ought not to have dealt with the merits of the case overlooking the fact that the writ petition was filed complaining the inaction on the part of the 3rd respondent in disposing of the case pending before him.

¹. MANU/TL/1115/2021

². MANU/AP/0227/1968

b) This Court assumed jurisdiction which is not called for in the writ petition wherein only the inaction on the part of the 3rd respondent in disposing of the case pending before him is complained.

c) This Court proceeded as if it is a writ petition filed by 16th respondent seeking to prohibit the 3rd respondent from disposing of the case pending before him on the ground that the same is not maintainable under Section 98 of the Act.

d) The view of this Court that the requirements of Section 98 of the Act are not satisfied and hence the petition filed before the 3rd respondent is not maintainable and erroneous.

8. With the said grounds, the petitioners sought to review the said order.

9. As discussed supra, the petitioners filed the aforesaid writ petition seeking a direction to 3rd respondent to consider the petition under Section 98 of the Act, 1950 for summary eviction of the respondent Nos.7 to 18 and delivery of the physical possession of the subject property.

10. Both the learned Asst. Govt. Pleader for Revenue and learned counsel appearing for respondent Nos.16 specifically

contended that the said application filed by the petitioners under Section 98 of the Act, is not maintainable. The petitioners while seeking a direction to 2nd respondent to dispose of the application filed by them under Section 98 of the Act, 1950, have to make out a case that the said application is maintainable. 3rd respondent is a quasi judicial official and cannot decide serious disputes with regard to succession rights and other aspects as held by this Court in the order dated 28.04.2023 in W.P.No.36753 of 2022. Thus, the petitioners have to make out a case, then they have to seek a direction to 3rd respondent to dispose of the application filed by them under Section 98 of the Act. In the present case, the petitioners failed to make out a case to direct the 3rd respondent to dispose of the application filed by them under Section 98 of the Act.

11. This Court also considered pendency of a suit vide O.S.No.123 of 2021 filed by husband and father of the petitioners respectively and that the subject land is not even agricultural land and also the principle laid down in **Abdul Kareem and Syed Jalal** (supra). Thus, on consideration of the entire aspects, this Court dismissed the writ petition. But this Court never assumed jurisdiction of 3rd respondent.

12. In **Common Cause v. Union of India**³, the Apex Court held that the ground/point which was not argued in writ petition is deemed it was given up.

13. In **N. Anantha Reddy v. Anshu Kathuria**⁴, the Apex Court held re-hearing in review application is impermissible.

14. In **Kamlesh Verma v. Mayavati**⁵, the Apex Court held that mistake apparent on the face of record itself is a ground to review an order.

15. In **Patel Narshi Thakershi v. Pradyauman Singhji Arjunsinghji**⁶, the Apex Court held that power to review is not inherent power and it must be conferred by law either specifically or by necessary implication.

16. In **Sow Chandra Kante v. Sheikh Habib**⁷, the Apex Court observed as follows:

“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

³. (2004) 5 SCC 222

⁴. (2013) 15 SCC 534

⁵. (2013) 8 SCC 320

⁶. AIR 1970 SC 1273

⁷. (1975) 1 SCC 674

fallibility. ... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.”

17. In **Parsion Devi v. Sumitri Devi**⁸, the Apex Court held that an error 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 record for the Court to exercise the powers of review.

18. On consideration of several decisions on review jurisdiction, in **Kamlesh Verma**⁵, summarized the principles for exercising jurisdiction and the same are as follows:

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

⁸. (1997) 8 SCC 715

The words “any other sufficient reason” has been interpreted in *Chajju Ram v. Neki* [AIR 1922 PC 112], and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius* [1955 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 v. Sandur Manganese & Iron Ores Ltd.* [(2013) 8 SCC 337].

20.2. When the review will not be maintainable:—

- (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.”

19. In **Shivdeo Singh v. State of Punjab**⁹, the Apex Court held that there is nothing in Article - 226 of the Constitution of India to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made. It may be exercised where some mistake or error apparent on the face of

⁹. (1979) 4 SCC 389

the record is found. It may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an appellate Court to correct all manner of errors committed by the subordinate Court.”

20. As per Section - 114 of the Civil Procedure Code, 1908 (for short ‘CPC’) and Order - XLVII of CPC, a review application would be maintainable on the following grounds:

- i. discovery of new and important matters or evidence which, after exercise of due diligence, were not within the knowledge of the applicant or could not be produced by him when the decree was passed or the order made;
- ii. on account of some mistake or error apparent on the face of the record; or
- iii. for any other sufficient reason.

21. Considering the same and also referring to its earlier judgments, in **S. Madhusudhan Reddy v. V. Narayana Reddy**¹⁰, the Apex Court held that the Court's jurisdiction of review is not the same

¹⁰. 2022 SCC OnLine SC 1034

as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order - XLVII, Rule - 1 of CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Apex Court, however, an error apparent on the face of the record can only be corrected by exercising review jurisdiction. For reviewing of a judgment as described in Order - XLVII, Rule - 1 of CPC, i.e., for any other sufficient reason, which phrase has been explained to mean “a reason sufficient on grounds, at least analogous

to those specified in the rule as held by the Apex Court in **Chajju Ram v. Neki Ram**¹¹ and **Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasia**¹².

22. In the light of the aforesaid principle laid down by the Apex Court, as discussed supra, the petitioners herein failed to make out any case to review the order dated 28.04.2023 in W.P.No.36753 of 2022. Therefore, the present review is liable to be dismissed and is dismissed.

K. LAKSHMAN, J

Date: 07.01.2025.

Vvr.

¹¹. AIR 1922 PC 112

¹². 1955 SCR 520