



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 6 OF 2024
IN
CIVIL REVISION APPLICATION NO. 600 OF 2023

- | | | |
|---|---|-------------------------|
| 1. Suresh Mathew Thomas |] | |
| Occupation: Business, having address at |] | |
| 59 Mumbai Samachar Marg, 2 nd Floor, |] | |
| Fort, Mumbai 400 023 |] | |
| 2. Mrs. Gracy Thomas, Occupation: |] | |
| Housewife having address at 59, |] | |
| Mumbai Samachar Marg, 2 nd Floor, |] | |
| Fort, Mumbai 400 023 |] | |
| 3. M/s. Suresh Estates Private Limited, |] | |
| a company having office at 59, Mumbai |] | |
| Samachar Marg, 2 nd Floor, |] | |
| Mumbai 400 023 |] | ... Petitioners. |

Versus

- | | | |
|---------------------------------------|---|------------------------|
| ECGC Limited, a company incorporated |] | |
| under the Companies Act, 1956 having |] | |
| its registered office at ECGC Bhavan, |] | |
| CTS 393, 393/1 to 45, MV Road, |] | |
| Andheri (East), Mumbai 400 069 |] | ... Respondent. |

WITH
REVIEW PETITION NO. 7 OF 2024
IN
CIVIL REVISION APPLICATION NO. 599 OF 2023

- | | |
|---|---|
| 1. Suresh Mathew Thomas |] |
| Occupation: Business, having address at |] |
| 59 Mumbai Samachar Marg, 2 nd Floor, |] |
| Fort, Mumbai 400 023 |] |

2. Mrs. Gracy Thomas, Occupation:]
Housewife having address at 59,]
Mumbai Samachar Marg, 2nd Floor,]
Fort, Mumbai 400 023] ... **Petitioners.**

Versus

ECGC Limited, a company incorporated]
under the Companies Act, 1956 having]
its registered office at ECGC Bhavan,]
CTS 393, 393/1 to 45, MV Road,]
Andheri (East), Mumbai 400 069] ... **Respondent.**

Mr.Simil Purohit, Senior Advocate, a/w Mr.Faran Khan, Mr.Vishal Raman,
Mr.H. K. Sudhakara i/by Mr. D. S. Mhaispurkar, for the Petitioners/Applicants.
Mr.R. Venkataramani, Attorney General of India (through video conferencing)
a/w Mr.Anandh Venkataramani, Mr.Rohan Cama, Mr.Naval Sharma, Mr.Saket
Satapathy, Mr. Nabeel Malik, Mr. Adithya Athreya and Ms.Anukriti Tomar i/by
Tuli and Co., for the Respondent.

Coram : Sharmila U. Deshmukh, J.
Reserved On : November 22, 2024
Pronounced On : January 31, 2025

JUDGMENT :

1. **Rule.** With consent, Rule made returnable forthwith and taken up for final disposal. Common submissions were advanced and both Review Petitions are being disposed of by this common judgment.
2. Both the Review Petitions seek review of the common judgment dated 3rd July, 2024 passed by this Court in Civil Revision Application No.599 of 2023 and Civil Revision Application No.600 of 2023 quashing the judgments passed by the Appellate Bench of Small Causes Court on the ground of jurisdictional error thereby reversing the decree of eviction of Respondent.

3. The Review Petitioners were the original Plaintiffs in TE Suit No.74/81/2007 and TE Suit No.128/145/2007 seeking eviction of the Respondent pleading that the agreements dated 15th May, 1980, 7th February, 1981 and 1st July, 1981 were agreements to lease and there is neither valid lease deed executed between the parties nor any registered document. The monthly tenancy of the Respondent is not protected and the tenancy has been terminated by communication dated 23rd March, 2002.

4. The Respondent raised objection as to maintainability and jurisdiction. It was contended that the Respondent has exercised the right to purchase the reversion and was no more the lessee/tenant of the trust. The Respondent also claimed protection of possession under Section 53A of the Transfer of Property Act.

5. Heard Mr.Purohit, Learned Senior Advocate appearing for the Review-Petitioners and Mr. R. Venkataramani, Learned Attorney General of India appearing for the Respondent.

6. The submissions of Mr. Purohit are that the judgment under review upholds the monthly tenancy and valid termination of tenancy. He submits that upon termination of lease, the status of the Respondent would be of lessee holding over, which status stood decided by the Division Bench decision of 22nd February, 2011. He submits that the decision of ***Anthony vs K.C Ittoop [2000 (6) SCC 394]*** relied upon in the judgment under review held that

the unregistered lease deed created monthly tenancy by conduct and therefore the clauses in the unregistered lease deeds cannot be looked into including the reversionary clause. He submits that the rejection of defence of registered agreement of 1992 has been upheld by the judgment under review and thus even they cannot be looked into for purpose of part performance. He submits that the finding in the judgment under review that the deed can be looked into for considering the aspect of part performance is contrary to status of monthly tenant.

7. He would submit that no right of reversion existed as the lease was not subsisting on 16th May, 2000. He submits that Section 53-A of Transfer of Property Act has no applicability as possession not handed over under the communication of 16th May, 2000. He submits that reliance on the decision in the case of ***St. Mary's Educational Society v. Dr. Qutubuddin Ahmed [2002 SCC OnLine AP 269]*** is misplaced as the same was an interlocutory order.

8. He submits that in any event plea of Section 53-A comes in play in case of prospective purchaser and not under lease and the Trial Court could not have concluded that the Respondent is prospective purchaser in view of the Division Bench order which held that the Respondent was tenant holding over and not prospective purchaser and therefore the issue of possession attained finality, which has also been considered by this Court in paragraph 91 and 92.

He submits that the Delhi High Court in ***Singer India Ltd vs Amita Gupta, (2000 SCC Online Del 768)*** has held that the benefit of Section 53A will not flow to the extent of enforcing terms of an unregistered lease and is only available as defence to a lessee. He points out that the Delhi High Court has held that a lease from month to month will survive so long as the notice of termination of lease is not served.

9. He submits that the judgment under review has reversed the decree of ejectment on the ground that the Appellate Court has not considered the plea of part performance and has disregarded the same without any discussion on the ground that the registered Lease-Deeds are not validly registered. He would submit that in such case, the appropriate course is to remand the matter. He points out Ground (EEE) of the Petition to contend that it was the Respondent's own case that any argument on Section 53A or nature of agreement is beyond the scope of Small Causes Court, and the Court has held the same to constitute jurisdictional error.

10. He submits that even if it is accepted that Section 53A was applicable, by applying the doctrine of severance, the judgment of Trial Court can be upheld. He submits that non consideration of Section 53A has no bearing and not relevant and therefore the judgment of Appellate Court could be upheld by applying doctrine of severability. In support he points out the pleading in the Review

Petition reproducing paragraph 30 of decision of Apex Court in ***Shewpujanrai Indrasanrai Ltd Vs Collector of Customs, [AIR 1958 SC 485]***.

11. *Per contra*, Learned Attorney General would submit that the Petitioners have already preferred Special Leave Petition before the Apex Court and the present Review Petition is second bite of the cherry. He submits that the threshold requirement for exercise of review jurisdiction has not been met as the submissions do not make out any case of error apparent on the face of record. He submits that if the Court does not address the material evidence, judgment etc. then it is the case of error apparent, or if any critical fact or document or evidence is not adverted in which case review is maintainable. He submits that it is well settled that the review is not a rehearing and all submissions raised now were advanced during the original hearing and have been considered by this Court in the judgment under review. He submits that considering the numerous grounds raised in the Petition, the submission of the Petitioners is that the entire judgment is fallible and therefore is required to be reviewed.

12. He submits that the question was who will have to look into the document and decide the nature and legality of document. He submits that the Petitioners' argument is that monthly tenancy is created by conduct and Small Causes Court has jurisdiction. He

submits that this Court in paragraph 80 has held that there was creation of landlord tenant relationship in context of unregistered lease. He submits that this Court in paragraph 89 refused to intervene in findings of fact that the lease deeds registered in the year 2009 were not valid lease deeds. He submits that the decision of ***St. Mary's Educational Society*** (supra) relied upon by the Petitioners was in context of party claiming defence of part performance on basis of lease and to continue possession as a lessee, whereas the Respondent claims part performance on basis of reversionary clause as prospective purchaser and not as lessee. He submits that the Apex Court in ***Maneklal Manuskhbhai v. Hormusji Ginwalla [1950 SCC OnLine SC 8]*** has held that agreement of lease creating present demise but not registered is admissible under Section 49 of Registration Act as evidence of part performance and formal lease is not necessary for Section 53-A, which has been cited by the judgment under Review at paragraph 96 after holding that the lease agreements create a present demise.

13. He submits that the decision of ***Anthony*** (supra) holds that an unregistered lease agreement for period exceeding one year becomes useless so far as creation of lease is concerned. He submits that such agreement can be relied upon for collateral purpose i.e. the reversionary clause which has no relation to the lease relationship between the parties. He submits that despite non registration, the

Respondent entered into possession of the suit premises by virtue of lease agreement and both parties governed their conduct as per lease agreement.

14. He submits that the submission for remand cannot be considered for first time in review proceedings and no power of remand is vested in Court of Review. He submits that power of remand cannot be for the purpose of giving fresh opportunity for re-litigation of the same issues and there is no observation in the judgment under review indicating the need for any re-trial of any issues.

15. He would submit that the doctrine of severance has no application to the present case and is being raised for the first time in review jurisdiction which is not permissible. He would submit that even other wise the judgment under review is not such that it can be severed into different parts as the issues of tenancy, termination, part performance etc. are interconnected. He submits that in paragraph 104 of the judgment under review, it has been held that the jurisdictional error goes to the root of the matter. He submits that the Petitioners have invoked the doctrine of severability which can be invoked in administrative law proceedings and not judicial proceedings.

16. He submits that the Trial Court and the Appellate Court have failed to exercise their jurisdiction by disregarding the lease

agreements and consequently failing to properly consider the part performance which constitutes jurisdictional error as held by the judgment under review. He submits that the Revisional Court has made observations and findings on the maintainability of the Respondent's part performance defence at paragraphs 84 to 86 and 94 to 98 of the judgment under review and therefore nothing further remains in the judgment under review. In support he relies upon the following decisions:

- (i) *CIT v. Saurashtra Kutch Stock Exchange Ltd. [(2008) 14 SCC 171];***
- (ii) *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, [(1980) 2 SCC 167];***
- (iii) *Kamlesh Verma v. Mayawati [(2013) 8 SCC 320];***
- (iv) *Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale [AIR 1960 SC 137];***
- (v) *Manish Newton v. Lachoo College of Science and Technology, Jodhpur [AIR 1994 Raj 182];***
- (vi) *Celkon Implex Pvt Ltd vs. Union of India [2024 SCC OnLine AP 3359];***
- (vii) *State of W.B. v. Kamal Sengupta [(2008) 8 SCC 612];***
- (viii) *Jain Studios Ltd. vs. Shin Satellite Public Co. [(2006) 5 SCC 501];***
- (ix) *Jagmittar Sain Bhagat v. Health Services, Haryana [(2013) 10 SCC 136];***
- (x) *Municipal Corporation, Hyderabad v. Sunder Singh [(2008) 8 SCC 485];***

- (xi) *P Purushottam Reddy v. Pratap Steels Ltd. [(2002) 2 SCC 686];***
- (xii) *Kartar Singh v. Rameshwari Kela [(1994) SCC OnLine Del 439];***
- (xiii) *Ravinder Kaur v. Ashok Kumar [(2003) 8 SCC 289];***
- (xiv) *SHL (India) (P) Ltd. v. CIT [2021 SCC OnLine Bom 1312].***

17. I have carefully gone through the judgment under review and have considered the submissions.

18. The sum and substance of the submissions canvassed by Mr.Purohit is that (a) As the Respondent has been held to be monthly tenant and tenancy has been validly terminated, upon termination, the status is of lessee holding over, which has been held by the Division Bench in the order of 22nd February, 2011, (b) The unregistered lease agreement created monthly tenancy by conduct and the clauses in unregistered lease deed cannot be looked into including reversionary clause, (c) There is no right of reversion to be exercised as there was no subsisting lease, (d) Section 53A of Transfer of Property Act has no applicability as possession not handed over under communication of 16th May, 2000 and (e) Non consideration of issue of part performance is immaterial and the judgment of Small Causes Court can be upheld by applying doctrine of severance.

19. In the judgment under Review, this Court in paragraph 56 framed three issues for consideration firstly whether the provisions

of Presidency Small Causes Court Act bars jurisdiction of Small Causes Court upon question relating to right, title and interest being raised by virtue of reversionary clause, secondly whether the determination of right in the suit premises qua the reversionary clause is an issue solely within the jurisdiction of specific performance court and thirdly whether the Appellate Court committed a jurisdictional error by determining issue of right and interest of Respondent in the suit premises.

20. In paragraph 68, this Court held that as far as jurisdiction is concerned, the Small Causes Court is entitled to examine the jurisdictional facts which may involve an examination of title to the suit property as an incidental issue and if upon adjudication, it is found that Small Causes Court does not have jurisdiction as there is no longer existence of landlord tenant relationship, the consequence will be dismissal of suit.

21. In paragraph 79, this Court held that the unregistered agreements are agreements of lease and then considered the effect of non registration of agreement of lease. In paragraph 86, this Court held that non registration of the agreements of lease resulted in Respondent being reduced to monthly tenant and will not come in way of being received in evidence of collateral purpose and could be received as evidence of part performance of contract for purpose of Section 53A of Transfer of Property Act.

22. In paragraph 94, this Court held that the Appellate Court had to look into the unregistered agreements in context of issues to be determined by Small Causes Court, i.e. to determine the jural relationship and secondly for assessing the nature and character of possession of Respondent upon determination of lease. Instead the Appellate Court has conclusively determined the Respondent's right in suit premises. It held that whether reversionary clause survived in unregistered agreement is an issue to be decided by specific performance court.

23. On the aspect of jurisdictional error, this Court held in paragraph 94 that the issue as to whether the reversionary clause survived in an unregistered agreement is an issue to be decided by specific performance Court in view of Section 49 of Registration Act and not by Small Causes Court and the validity of registered lease deeds was examined solely in context of determining rights of reversion and part performance flowing from registered lease deeds. This Court held that the Appellate Court did not consider whether the lease agreements created a right in Respondent to possession of property for resisting claim of ejectment. In paragraph 98 it is held that the Appellate Court failed to exercise the jurisdiction in context of considering the relief of recovery of possession.

24. In paragraph 99, it is held that the Appellate Court had the jurisdiction to consider the reversionary clause in context of change

in nature and possession as an incidental issue. In paragraph 106 this Court has held that the Appellate Court has ventured into the rights of Defendant flowing from the agreements executed between the parties treating the suit as one for determination of right and interest in suit premises which is specifically prohibited. By disregarding the unregistered lease deeds even in context of considering plea of part performance, the Appellate Court has not exercised the jurisdiction vested in it.

25. The submissions now canvassed by Mr. Purohit were addressed during the original hearing of the Revision Application and duly considered. In paragraph 84 and 86 of the Judgment under Review, the submission of Mr. Purohit that reversionary clause in the unregistered lease deed cannot be looked into has been answered by holding that unregistered deed can be looked into for evidence of part performance of contract by relying on the decision of ***Maneklal Manuskhbhai*** (supra).

26. On the submission that no right of reversion was available as the lease was not subsisting, this Court in paragraph 101 has held that the question whether right of reversion fructified in favour of Respondent is a question to be decided by specific performance court.

27. The submission that the order of year 2011 of Division Bench held that the status of Respondent upon termination of lease was of

lessee holding over has been dealt with in paragraph 66 holding that the Division Bench concludes the issue of jurisdiction at inception of suit and in paragraph 67, it has been held that if subsequent upon adjudication, it is found that Small Causes Court does not have the jurisdiction, the consequence will be dismissal of suit.

28. On the aspect of part performance, it is held in paragraph 95, that the Appellate Court's judgment does not decide the issue whether the lease agreements created a right in the Respondent to possession of property for resisting claim for ejection. In paragraph 102, it is held that this Court cannot render any finding on plea of part performance and that the Appellate Court has not considered the plea of part performance and has disregarded the same without any jurisdiction.

29. This Court in the judgment under review has allowed the Revision Petition on the ground of jurisdictional error as: (a) the Small Causes Court has determined the Respondent's right in suit premises which was an issue before the specific performance court, (b) the defence of part performance as incidental question for purpose of whether the Respondent has a right of possession for resisting ejectment was not considered and (c) Appellate Court exceeded its jurisdiction by terming the unregistered and registered lease deed as incompetent source of Respondent's reversionary right and interest essentially deciding the issue of title.

30. I have re-produced the various paragraphs of the judgment under review to demonstrate that all the arguments raised by the Review Petitioners were raised during the initial hearing and dealt with. The review jurisdiction is not virgin ground and there cannot be re-hearing and re-agitating of over ruled arguments. It is not the case of the Petitioners that the judgment under review did not consider the submissions advanced during the original hearing. Review is sought on ground of error apparent on record. The error must be manifest on the face of record and would amount to an error of inadvertence. For the error to be apparent, the error must not be one which is not required to be fished out by detailed process of reasoning. The lengthy arguments advanced by the parties would indicate that the review proceedings were converted into virtual re-hearing of the arguments, which were advanced during the original hearing and considered.

31. The grounds pleaded in the Review Petition constitutes grounds of Appeal and not review. The submission of Mr. Purohit is that the finding of monthly tenancy and termination of tenancy has been accepted, and Section 53A has no application and thus decree of eviction should have been upheld. The submissions canvassed would term the judgment under Review as erroneous, which can be corrected only by the higher forum. The review jurisdiction cannot be exercised to re-hear and correct an erroneous decision.

32. The Apex Court in case of **S. Madhusudan Reddy v. V. Narayana Reddy [2022 SCC Online SC 1034]** considered the judicial pronouncements governing the field of review in paragraph Nos.21, 23, and 27 as under :

21. In Avtar Singh Sekhon v. Union of India [Avtar Singh Sekhon v. Union of India, 1980 Supp SCC 562 : 1981 SCC (L&S) 381] , this Court observed that a review of an earlier order cannot be done unless the court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness. The observations made are as under : (SCC p. 566, para 12)

"12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In Sow Chandra Kante v. Sk. Habib [Sow Chandra Kante v. Sk. Habib, (1975) 1 SCC 674 : 1975 SCC (Cri) 305 : 1975 SCC (L&S) 184] this Court observed : (SCC p. 675, para 1)

'1. ... 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.' "

(emphasis supplied)

23. The error referred to under the Rule, must be apparent on the face of the record and not one which has to be searched out. While discussing the scope and ambit of Article 137 that empowers the Supreme Court to review its judgments and in the course of discussing the contours of review jurisdiction under Order 47 Rule 1CPC in Lily Thomas [Lily Thomas v. Union of India, (2000) 6 SCC 224 : 2000 SCC (Cri) 1056] , this Court held as under : (SCC pp. 250-53, paras 54, 56 & 58)

"54. Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court Rules made in exercise of the powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of the grounds specified in Order 47 Rule

1 of the Code of Civil Procedure which provides:

'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.'

Under Order XL Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases. Order XL Rule 5 of the Supreme Court Rules provides that after an application for review has been disposed of no further application shall be entertained in the same matter.

56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.

58. Otherwise also no ground as envisaged under Order XL of the Supreme Court Rules read with Order 47 of the Code of Civil Procedure has been pleaded in the review petition or canvassed before us during the arguments for the purposes

of reviewing the judgment in Sarla Mudgal case [Sarla Mudgal v. Union of India, (1995) 3 SCC 635 : 1995 SCC (Cri) 569] . It is not the case of the petitioners that they have discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment. All pleas raised before us were in fact addressed for and on behalf of the petitioners before the Bench which, after considering those pleas, passed the judgment in Sarla Mudgal case [Sarla Mudgal v. Union of India, (1995) 3 SCC 635 : 1995 SCC (Cri) 569] . We have also not found any mistake or error apparent on the face of the record requiring a review. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. No such error has been pointed out by the learned counsel appearing for the parties seeking review of the judgment. The only arguments advanced were that the judgment interpreting Section 494 amounted to violation of some of the fundamental rights. No other sufficient cause has been shown for reviewing the judgment. The words "any other sufficient reason appearing in Order 47 Rule 1CPC" must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in Chhajju Ram v. Neki [Chhajju Ram v. Neki, 1922 SCC OnLine PC 11 : AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius [Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius, (1954) 2 SCC 42 : (1955) 1 SCR 520 : AIR 1954 SC 526] . Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. In T.C. Basappa v. T. Nagappa [T.C. Basappa v. T. Nagappa, (1954) 1 SCC 905 : (1955) 1 SCR 250 : AIR 1954 SC 440] this Court held that such error is an error which is a patent error and not a mere wrong decision. In Hari Vishnu Kamath v. Syed Ahmad Ishaque [Hari Vishnu Kamath v. Syed Ahmad Ishaque, (1954) 2 SCC 881 : AIR 1955 SC 233] , it was held : (AIR p. 244, para 23)

'23. ... 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 clear-cut rule by which the boundary between the two classes of errors could be demarcated.

Mr Pathak for the first respondent contended on the strength of certain observations of Chagla, C.J. in — Batuk K. Vyas v. Salim M. Merchant [Batuk K. Vyas v. Salim M. Merchant, 1952 SCC OnLine Bom 46 : ILR 1953 Bom 191] , that no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.'

Therefore, it can safely be held that the petitioners have not made out any case within the meaning of Article 137 read with Order XL of the Supreme Court Rules and Order 47 Rule 1CPC for reviewing the judgment in Sarla Mudgal case [Sarla Mudgal v. Union of India, (1995) 3 SCC 635 : 1995 SCC (Cri) 569] . The petition is misconceived and bereft of any substance."

(emphasis supplied)

27. *In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389] , this Court was examining an order passed by the Judicial Commissioner who was reviewing an earlier judgment that went in favour of the appellant, while deciding a review application filed by the respondents therein who took a ground that the predecessor court had overlooked two important documents that showed that the respondents were in possession of the sites through which the appellant had sought easementary rights to access his homestead. The said appeal was allowed by this Court with the following observations : (SCC p. 390, para 3)*

"3. ... It is true as observed by this Court in Shivdev Singh v. State of Punjab [Shivdev Singh v. State of Punjab, 1961 SCC OnLine SC 29 : AIR 1963 SC 1909. See also Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389] there is nothing in Article 226 of the Constitution to preclude a 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 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 powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

(emphasis supplied)"

33. Conspectus of the various decisions noted by the Apex Court in case of ***S.Madhusudan Reddy Vs V. Narayana Reddy*** (supra) indicates the following:

- a) Review of earlier order cannot be done unless the court is satisfied that the material error which is manifest on face of the order, would result in miscarriage of justice or undermine its soundness.
- b) A review of 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.
- c) An error that is not self evident and the one that has to be detected by process of reasoning, cannot be described

as an error apparent on face of the record for the Court to exercise the powers of review.

- d) In exercise of powers of review, 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'.
- e) The error referred to in Order 47 Rule 1 of CPC must be apparent on face of the record and not one which has to be searched out. It must be an error of inadvertence.
- f) The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review.
- g) Error apparent on face of the proceedings is an error which is based on clear ignorance or disregard to the provisions of law.
- h) Error apparent on face of record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature and it must be left to be determined judicially on the facts of each case.
- i) Under the garb of filing review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

34. For consideration of the submissions of Mr. Purohit this Court will have to re-appreciate its findings rendered on the applicability of Section 53-A in context of unregistered lease agreements and whether the clauses in the unregistered agreements can be looked into as evidence of part performance, which would amount to virtually sitting in appeal over its own judgment. There cannot be consideration of fresh judgments in review. It is also not possible to accept the doctrine of severability propounded by Mr. Purohit for the reason that firstly the said submissions were not canvassed during the original hearing of the Revision Application and secondly the plea of part performance to resist the suit for ejection is interlinked with the relief of eviction.

35. The submission on remand is unacceptable as the judgment under review holds in paragraph 98 that the Appellate Court has disregarded the plea of part performance only on the basis that no right of part performance flowed from the registered lease deeds. This Court held that the plea of part performance could be considered in context of the unregistered document. The finding of the Appellate Court on plea of part performance and non consideration of the unregistered lease deeds in that context has been held to constitute a jurisdictional error and thus there is no question of remand.

36. In light of the discussion above, no case for review on the ground of error apparent on face of record is made out. Resultantly, Review Petitions stands dismissed. Rule stands discharged.

[Sharmila U. Deshmukh, J.]