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Rev.Appl.342 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

Rev.Appl.342 of 2024
against S.A.No.733 of 2007

Rev.Appl.342 of 2024

Raja Thiruvankada Sivasubramaniyan (died)

S.Kalavathy

W/o.M.Sihamani,

No.692/M2, VNR Nagar,

Virudhachalam - 606 001,

Cuddalore District.

...

Review Petitioner

* Sole Appellant died recorded as per memo dated
14.12.2021 (Presented at Court) vide court order
dated 14.12.2021 made in SA no.733/2007.

* R2 brought into record as legal heir of the deceased
sole appellant viz. Raja Thiruvankada Sivasubramaniyan
vide court order dated 10.02.2022 made in C.M.P.No.614/22
in S.A.No.733 of 2007

versus

Vaithilingam (died)

(Memo recorded (USR.No.39425 dated 20.11.2023))

1.Dhanalakshmi

2.Subramanian

...

Respondents

Prayer: Review Petition filed under Order 47 Rule 1 read with 114 of the
Civil Procedure Code against the order passed in S.A.No.733 of 2007 dated
29.01.2024.

1/14



For Petitioner : Mr.S.Natarajan

ORDER

This Review Application is preferred for reviewing the order passed in S.A.No.733 of 2007 dated 29.01.2024.

2. The Second Appeal was originally preferred by the husband of the review petitioner, challenging the judgment and decree dated 26.12.2005 made in A.S.No.63 of 2005 on the file of the Principal Sub Court, Virudhachalam, confirming the judgment and decree dated 21.12.2004 passed in O.S.No.1738 of 1993, on the file of the I Additional District Munsif Court, Virudhachalam.

3. During the pendency of the appeal, the review petitioner's husband died and she was substituted as legal heir and impleaded as the second appellant. The appeal was heard and the judgment was passed on 29.01.2024, dismissing the appeal.

4. The appellant has preferred the above review application, listing out at least 34 grounds seeking review of the order. The bare perusal of the grounds raised in review is to the effect that the order has been passed in the Second Appeal by not properly considering the well-established



principles of law and the weight of evidence and such other grounds which could hardly be grounds for review, but only be raised before the appellate court.

5. Mr.S.Natarajan, learned counsel for the petitioner made the following submissions, seeking review of the order:-

- (i) that necessary parties were not arrayed in the suit and therefore the decision arrived at in the appeal is not valid;
- (ii) there was a Will available with the parties pertaining to the subject matter of the properties and even though the Will has not been marked as an exhibit in the suit, still the Court ought to have received and gone through the contents of the Will to arrive at a proper decision;
- (iii) the appellant's vendor had filed a suit in the year 1989, which was dismissed for default and in view of such a suit, the present suit filed by the respondents/plaintiffs is not maintainable and hit by the principles of *res judicata*;
- (iv) the vendors of the appellant were assigned with DKT pattas and the pattas establish the ownership of their vendors;
- (v) if the registering authorities of the Tamil Nadu Registration Department are impleaded now in this review, several facts will



come to light and that would necessarily alter the order passed in the appeal.

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6. The learned counsel by making the above submissions contended that in view of the same, the review application may be allowed and the matter may be remanded back to the trial court for fresh consideration of the suit by taking note of all the above aspects.

7. Heard the counsel for petitioner and perused the materials available on record.

8. The scope of review is limited and is to be confined to the parameters as set out in the provision itself. For better understanding, Order 47 Rule 1 CPC is extracted hereunder:-

“Order 47 Rule 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.*



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(2) *A party who is not appealing from a decree or Order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.*

[Explanation~ The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]”

9. The petitioner cannot be allowed to treat the review as an appeal in disguise and re-argue the appeal. Only if there is an error apparent on the face of the record or if it satisfies the other parameters as laid down in the above provision, the parties are entitled to seek review. In fact, the Hon'ble Supreme Court had made it clear that the error apparent should be evident from the mere perusal of the order and not after conducting a detailed enquiry. Further even if there is another view possible by re-appreciating the matter, that will not fall within the scope of the review court, as the powers of review court are very limited, which cannot be substituted with the appellate court.

10. At this juncture, it will be useful to refer the decision of the Hon'ble Supreme Court in the case of ***Perry Kansagra v. Smriti Madan Kansagra***, reported in ***(2019) 20 SCC 753***, wherein it was observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit on appeal over its own order and a rehearing of the matter is impermissible in law. The



Hon'ble Supreme Court was pleased to lay down the following principles relating to exercise of review jurisdiction under Order 47 Rule 1 CPC:

“(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the face of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit.”

11. Further in the case of ***S.Madhusudhan Reddy v. V.Narayana***

Reddy and Others reported in ***(2022) 17 SCC 255***, the Hon'ble Supreme

Court has held as follows:

“24. It is also settled law that in exercise of review jurisdiction, the Court cannot reappreciate the evidence to arrive at a different conclusion even if two views are possible in a matter. In Kerala SEB v. Hitech Electrothermics & Hydropower Ltd., this Court observed as follows :

“10. ...In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the



record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise.”

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25. Under the garb of filing a 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 is not to be confused with the appellate power which enables the superior court to correct errors committed by a subordinate court. This point has been elucidated in *Jain Studios Ltd. v. Shin Satellite Public Co. Ltd.* wherein it was held thus :

“11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of “second innings” which is impermissible and unwarranted and cannot be granted.”

26. After discussing a series of decisions on review jurisdiction in *Kamlesh Verma v. Mayawati*, this Court observed that review proceedings have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. As long as the point sought to be raised in the review application has already been dealt with and answered, the parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review jurisdiction were succinctly summarised in the captioned case as below :

“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



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- (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.*

The words “any other sufficient reason” have been interpreted in Chhajju Ram v. Neki , and approved by this Court in Moran Mar Basselios Catholicos v. Mar Poulose Athanasius 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.

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.”*

27. *In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, 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 :*

“3. ... It is true as observed by this Court in Shivdev Singh v. State of Punjab 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



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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.”

28. In *State of W.B. v. Kamal Sengupta*, this Court emphasised the requirement of the review petitioner who approaches a Court on the ground of discovery of a new matter or evidence, to demonstrate that the same was not within his knowledge and held thus :

“21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review **ex debito justitiae**. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.”

29. In the captioned judgment, the term “mistake or error apparent” has been discussed in the following words :

29.“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 self-evident 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.”



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30. In *S. Nagaraj v. State of Karnataka*, this Court explained as to when a review jurisdiction could be treated as statutory or inherent and held thus :

“18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court.”

31. In *Patel Narshi Thakershi v. Pradyuman Singhji Arjunsinghji*, this Court held as follows :

“4. ...It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order.”

32. In *Shri Ram Sahu v. Vinod Kumar Rawat*, citing previous decisions and expounding on the scope and ambit of Section 114 read with Order 47 Rule 1, this Court has observed that Section 114 CPC does not lay any conditions precedent for exercising the power of review; and nor does the section prohibit the Court from exercising its power to review a decision. However, an order can be reviewed by the Court only on the grounds prescribed in Order 47 Rule 1 CPC. The said power cannot be exercised as an inherent power and nor can appellate power be exercised in the guise of exercising the power of review.

33. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court's jurisdiction of review, is not the same 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 47 Rule



ICPC. 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 superior court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order 47 Rule 1 for reviewing a judgment has been described as “for any other sufficient reason”. The said phrase has been explained to mean “a reason sufficient on grounds, at least analogous to those specified in the rule”.

12. Further, in the recent decision of the Hon'ble Supreme Court in ***Sanjay Kumar Agarwal Vs. State Tax Officer & Anr.*** reported in (2024) 2 SCC 362, the principles of review have been summarised as follows:

“16. The gist of the afore stated decisions is that:

16.1. A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

16.2. A judgment pronounced by the court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

16.3. 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 record justifying the court to exercise its power of review.

16.4. In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be “reheard and corrected”.

16.5. A review petition has a limited purpose and cannot be allowed to be “an appeal in disguise”.

16.6. Under the guise of review, the petitioner cannot be permitted to reargue and reargue the questions which have already been addressed and decided.

16.7. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.



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16.8. *Even the change in law or subsequent decision/judgment of a coordinate or larger Bench by itself cannot be regarded as a ground for review.”*

13. From the above dictum laid down by the Hon'ble Supreme Court, it is clear that re-arguing the appeal in the guise of review is impermissible and only new materials that were not able to be placed originally in spite of due diligence of the petitioner could be gone into and other errors apparent on the face of the record may be appreciated. The grounds raised in the review application and the arguments advanced by the learned counsel for the petitioner as extracted above, evidently do not fall within the parameters as enunciated under the provision or as per the dictum laid down by the Hon'ble Supreme Court as summarised above.

14. The arguments made that even when admittedly no Will was marked in a suit or produced at any stage, in spite of the same, the Court ought to have collected the document and appreciated the Will which would have had a bearing effect in the proceedings and also the further contention that if the registration authorities are impleaded now new facts will come to light, can hardly be grounds for seeking review. In fact the issues have already been raised and considered in the appeal, which is again sought to be reargued in the guise of review.



15. In view of the same, the submissions and grounds raised cannot be appreciated in the review and in such circumstances, Review Application fails and accordingly the same stands ***dismissed***.

16. There shall be no order as to costs.

09.01.2025

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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