WWW.LEGALERAONLINE.COM

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3601 OF 2020
(@ Special Leave Petition (Civil) No. 28150 OF 2017)

SHRI RAM SAHU (DEAD) THROUGH LRS & ORS. .. Appellants

Versus

VINOD KUMAR RAWAT & ORS. ..Respondents

JUDGMENT

M. R. Shah, J.

1. Leave granted.

Feeling aggrieved and dissatisfied with the impugned order dated 14.07.2017 passed by the High Court of Madhya Pradesh at Gwalior in Review Petition No.465 of 2015 in First Appeal No.241 of 2005, by which the High Court has allowed the said review petition filed by the respondent nos. 1 and 2 herein- original defendants

Signature Not Verified
Digitally signed by ARJUN BISHT
Date: 2020.11.16 16:47:00 IST
Reason:

nos. 1 and 2, and has reviewed the judgment and order dated 10.12.2013 passed in First Appeal No.241 of 2005 and has deleted the observations made in para 20 of the said judgment and order more particularly with respect to the observations made in para 20 as regards the possession of the disputed house, which were in favour of the appellants - the original plaintiffs, the appellants have preferred the present appeal.

2. The relevant facts leading to the present appeal in nutshell are as under:

That one Shri Ram Sahu, the predecessor of the appellants herein instituted Civil Suit No.04A of 2005 before the Learned Trial Court against the respondents herein - original defendants for declaration of registered Sale Deed dated 25.03.1995 executed by original defendant no.3 in favour of original defendant nos. 1 & 2 regarding House No.28/955 (previous House No.3/1582), situated in Sube Ki Payga, Jiwajiganj, Lashkar, as null and void and for permanent injunction against defendant nos. 1 & 2 restraining defendant nos. 1 & 2 from transferring the disputed property to any other person.

2.1. That the original plaintiff Shri Ram Sahu claimed the ownership of the disputed property on the basis of the will executed by one Chhimmabai executed in his favour on 19.10.1993. The original plaintiff also claimed that he became the sole owner on the death of the Chhimmabai and possession holder of the entire house and in the same capacity; he is in continuous possession over the same. It was the case on behalf of the defendants that the said Chhimmabai adopted defendant No.3 and later on, she got registered the Adoption Deed on 13.05.1992 and that the original defendant no.3 sold the disputed property in favour of the respondent nos. 1 & 2. The original plaintiff denied the adoption of defendant no.3 by the said Chhimmabai. The written statement was filed on behalf of the respondents. They denied that the disputed property was the Joint Hindu Family property. Defendant nos. 1 and 2 also claimed to be the *bona fide* purchasers and in possession of the suit property.

LEGAL MEDIA GROUP
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

2.2. The Learned Trial Court framed the following issues:

> "1. Whether, the Disputed House No.28/95 situated in Sube Ki Payga, Jiwajiganj, Lashkar, Gwalior was purchased from the income of Joint Hindu Family of Ghasilal and Mangaliya?

2. Whether, the wife of Ghasilal namely Chhimmabai had executed Will of aforesaid House in favour of the Plaintiff on 19.10.1993?

3. Whether, Defendant No.3 was adopted by Ghasilal on 28.01.1985, which was got registered by Chhimmabai on 13.05.1992.

4. Whether, Sale Deed dated 25.03.1995 regarding the disputed house was executed by Defendant No.3 in favour of Defendant Nos. 1 & 2 without having any right?

5. Whether, the Plaintiff is entitled to get the Registered Sale Deed Dated 25.03.1995 as null and void?

6. Whether, Plaintiff is entitled to receive Permanent Injunction against the Defendant Nos. 1 & 2 for not to sell the disputed house?

7. Whether, the Defendant Nos. 1 & 2 are entitled to receive special compensation from the Plaintiff? If Yes, then how much?

8. Relief & Costs."

2.3. Both the parties led the evidence, oral as well as documentary, in support of their respective claims.

2.4. Original Plaintiff Shri Ram Sahu – appellant herein was examined as PW1. He was also cross-examined (his deposition shall be discussed herein below). He also led the evidence in support of his claim that he is in possession of the said property.

On behalf of the defendants, defendant no.1 stepped into the witness box and through him; the defendants also produced on record the documentary evidences.

2.5. On appreciation of the evidence, the Learned Trial Court dismissed the suit. The Learned Trial Court disbelieved the case on behalf of plaintiff – appellant herein that Chhimmabai executed the will in favour of the plaintiff - appellant. The Learned Trial Court held that the defence had proved that defendant No.3 was adopted by Ghasilal on 26.01.1985 which was got registered later on by Chhimmabai vide Adoption Deed dated 13.05.1992.

2.6. Feeling aggrieved and dissatisfied with the Judgment and decree passed by the Learned Trial Court dismissing the suit, the original plaintiff – appellant herein preferred First Appeal No.241 of 2005 before the High Court. That during the pendency of the said appeal, respondent no.1 herein filed an application under section 151 C.P.C. on 19.03.2012 for dismissing the appeal and for directing the appellant herein to vacate the suit property. That during the pendency of the appeal the original plaintiff – appellant herein filed an application under Order 6 Rule 17 of the CPC by

which the plaintiff sought amendment in the relief clause as regards the issuance of permanent injunction and restraining defendant nos.1 and 2 from dispossessing the plaintiffs forcibly from the disputed house. However, the said application came to be dismissed by the High Court on the ground of delay and latches (I.A. No.2244 of 2012). However, while dismissing the said application the High Court granted permission to the appellants to file a separate suit for the said relief against the defendants. Thereafter on appreciation of the evidence on record, the High Court dismissed the said appeal preferred by the original plaintiff. However, while dismissing the appeal the High Court also made observations as regards the possession of the disputed house and on analysis of the deposition of PW1 and PW2 and considering the material on record and considering the fact that during the pendency of the appeal the original defendant no.1 himself filed an application under Section 151 CPC on 02.12.2013 for getting the possession from the plaintiff of the disputed house, which was withdrawn, the High Court made observations in regards the possession of the plaintiffs of the disputed house.

2.7 Thereafter almost 2 years after the judgment of the High Court in the First Appeal, the Respondent Nos.1 & 2 herein - Original Defendant Nos. 1 & 2 filed an application before the High Court seeking review of observations in para 20 of the judgment as regards the possession of the disputed house. The said application was opposed by the appellants herein. However, by the impugned order, the High Court has allowed the review application and has ordered to delete para 20 of the Judgment and order dated 10.12.2013 passed in First Appeal No.241 of 2005, by observing that as regards the possession of the disputed property the issue of possession was neither raised before the Learned Trial Court nor before the First Appellate Court and even no issue with respect to possession was framed by the Learned Trial Court.

2.8. Feeling aggrieved and dissatisfied with the impugned order passed by the High Court in allowing the review application and deleting para 20 of the judgment and order dated 10.12.2013 passed in First Appeal No.241 of 2005, the original plaintiffs have preferred the present appeal.

3. Shri A.K. Srivastava, learned Senior Advocate appearing on behalf of the appellants has made the following submissions, while assailing the impugned order passed by the High Court passed in the review application.

(i) while passing the impugned order, the High Court has exceeded in its jurisdiction, while exercising the review jurisdiction and has acted beyond the scope and ambit of the review jurisdiction under Order 47 Rule 1 CPC;

(ii) while exercising the review jurisdiction, the High Court ought not to have set aside the specific finding given with respect to possession, which finding was based on appreciation of evidence before the learned trial Court;

(iii) the High Court has committed a grave error in deleting para 20 of the final judgment and order dated 10.12.2013 passed in First Appeal No. 241/2005, in exercise of its review jurisdiction inasmuch as, as such, there was no error apparent on the face of the record, which was required to be corrected;

(iv) merely because the specific issue with respect to possession was not framed by the learned trial Court, cannot be a ground to set

aside the finding by the High Court, when such finding with respect to possession was on merits and on appreciation of the evidence before the learned trial Court;

(v) as such, the High Court has committed a grave error in considering the issues framed in another case being Civil Suit No. 3-A/2005, which was related to House No. 28/956 and in which the parties were also different. It is submitted that the High Court has mis-directed itself, while considering the issues framed in Civil Suit No. 3-A/2005, related to House No. 28/956 and not considering the issues framed in Civil Suit No. 4-A/2005;

(vi) the High Court ought to have appreciated that the issue of possession was at large before the learned trial Court and, in fact, the parties also led evidence with respect to possession. It is submitted that the High Court ought to have appreciated that there was a specific averment in the plaint as well as in the testimony of the plaintiff that he is in possession of the suit property, i.e., House No. 28/955;

(vii) the defendants did not led any evidence with respect to possession. It is submitted therefore that when there were specific

averments and pleadings in the plaint in regard to possession, and even the plaintiff led the evidence specifically on the possession, non-framing of the specific issue with respect to possession would not vitiate the finding recorded by the High Court, which was on appreciation of the material on record. In support of his submission, learned Senior Advocate appearing on behalf of the appellants has relied upon the following decisions of this Court, *Sri Gangai Vinayagar Temple v. Meenakshi Ammal (2015) 3 SCC 624; Bhuwan Singh v. Oriental Insurance Company Ltd. (2009) 5 SCC 136; and Sayeda Akhtar v. Abdul Ahad (2003) 7 SCC 52*. It is submitted that all the parties were aware of the rival cases and the issue with respect to possession was present and even the plaintiffs also led evidence on possession, non-framing of the specific issue with respect to possession would be non-significant. It is submitted that therefore the High Court has committed a grave error in deleting para 20 of the final judgment and order dated 10.12.2013 passed in First Appeal No. 241/2005 with respect to possession mainly on the ground that no issue was framed by the learned trial Court with respect to possession;

3.1 Learned Senior Advocate appearing on behalf of the appellants has also taken us to the relevant averments in the plaint as well as the written statement in regard to possession. Learned Counsel appearing on behalf of the appellants has also taken us to the testimony of the plaintiff – Shri Ram Sahu, as well as, the deposition of one J.K. Sharma examined on behalf of the plaintiff. Learned Senior Advocate has further submitted that there was no cross-examination by the defendants on the point of the plaintiff's possession. Learned Senior Advocate has also heavily relied upon the application and affidavit dated 19.03.2012 in which the respondents in an application filed under Section 151 of the CPC specifically prayed to direct the appellants to vacate the suit property. It is submitted that therefore, in fact, the respondents admitted the possession of the appellants. It is submitted that not only that, but subsequently in the month of September, 2017, the respondents filed a suit against the appellants for decree of possession, compensation and mesne profits. It is submitted that therefore, as such, the respondents herein specifically admitted the possession of the appellants in the suit property;

3.2 It is further submitted that the High Court ought to have appreciated that the review application was filed with a malafide intention faced with the proceedings under Section 340 read with Section 195 Cr.P.C and faced with the order passed by the learned Magistrate directing to register the case against respondent nos. 1 and 2 herein and others under Sections 193, 465, 471 and 120-B of the IPC, dated 06.02.2016;

3.3 It is further submitted that, in fact, the appellants filed an application before the High Court under Order 6 Rule 17 CPC (IA No. 2244/2012) to amend the plaint by adding relief for the grant of decree of permanent injunction restraining the respondents- defendants not to dispossess them forcibly. It is submitted that the said application was opposed by the respondents herein by submitting that they are not threatening to dispossess the appellants during the pendency of the suit. Therefore, the High Court dismissed the said application under Order 6 Rule 17 CPC reserving liberty in favour of the appellants to file a separate suit for the aforesaid relief. It is submitted that therefore, as such, the

issue with respect to possession was at large even before the High Court;

3.4 Learned Senior Advocate appearing on behalf of the appellants has also heavily relied upon the order passed by the learned Magistrate on an application filed under Section 340 read with Section 195 Cr.P.C., in which the learned Magistrate took note of the affidavit dated 19.03.2012 filed by the respondents and also took note of the specific observation and finding with respect to possession made in para 20 of the judgment and order dated 10.12.2013. It is submitted that there is a specific finding given by

the learned Magistrate on the respondents' forging/creating/concocting the documents to show their possession. It is submitted that only thereafter the learned Magistrate directed to register the case against the respondents under Sections 193, 465, 471 and 120-B of the IPC, under the provisions of Section 340 Cr.P.C;

3.5 It is submitted that even subsequently the suit filed by the defendants-respondents herein, filed in the year 2017, has been dismissed by the High Court on the ground of limitation and the

plaint has been rejected in exercise of powers under Order 7 Rule 11 CPC;

3.6 Making the above submissions and relying upon the aforesaid decisions, it is prayed to allow the present appeal.

4. Shri Punit Jain, Learned Advocate appearing on behalf of the respondents while opposing the present appeal and supporting the impugned order passed by the High Court has vehemently submitted that in the facts and circumstances of the case the High Court has not committed an error in deleting para 20 of the judgment and order dated 10.12.2013 passed in First Appeal No.241 of 2005 in exercise of the review jurisdiction.

BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

4.1 It is submitted that as such the original plaintiff filed the suit seeking cancellation of the sale deed dated 25.03.1995 and permanent injunction to the effect that the defendant nos. 1 & 2 (respondents herein) shall not transfer the property to any other person. It is submitted that since no injunction from dispossession was sought and only injunction against further transfer was sought no issue was framed in respect of possession. It is submitted that

therefore in absence of any specific issue framed by the Learned Trial Court in respect of possession of the property and when the suit was dismissed and even thereafter the appeal also came to be dismissed, there was no reason and/or occasion for the High Court to make any observation in respect of possession and therefore the High Court has rightly deleted the observations made in para 20 in respect of possession. It is submitted that during the lifetime of Shri Ghisa Lal Sahu, he was in possession of the property. After his death, his wife Smt. Chhimmabai came into possession of the property. She continued to be in possession and after her, the adopted son – Dilip Kumar Sahu came into possession. The issue of adoption of Shri Dilip Kumar Sahu was a subject matter of litigation in Suit No.4A of 2001, where the said adoption and the adoption deed dated 13.05.1992 was challenged. The said suit was finally dismissed by the High Court by an order dated 07.09.2009 in SA No.315 of 2005. The will setup by the petitioner dated 19.10.1993 was also a subject matter of suit No.45A of 2003 filed by Dilip Kumar Sahu. The said suit was decreed by a judgment dated 07.09.2009 in SA No.946 of 2005. Some parts of the property

was in possession of Tenants – (i) Om Babu Saxena and (ii) Kashmir Singh Yadav. Shri Dilip Kumar Sahu got possession from the said tenants on 30.01.1995 by entering into compromises with them. Shri Dilip Kumar Sahu executed sale deed dated 25.03.1995 in favour of the Respondents. Under the said sale, possession of the property was given to the respondents. The petitioner got possession of another portion of the property from another tenant – Parvesh Singh Jadon pursuant to a judgment and decree dated 18.10.2014. The petitioner has not shown as to how, under what capacity and when the petitioner came into possession of the property, constructive or otherwise.

LEGAL MEDIA GROUP
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

4.2 So far as the withdrawal of the application dated 02.12.2013 in I.A. No.1267 of 2012 which was filed by the respondents is concerned, it is submitted that the said application was withdrawn since (i) no relief could have been claimed arising out of a suit initiated by the plaintiffs and (ii) further the portion of the property in possession of the estranged wife of the petitioner - Smt. Sheela Sahu who was not a party to the said proceedings.

4.3 It is submitted even the application submitted by the petitioner under Order 6 Rule 17 CPC to amend the prayer clause of permanent injunction restraining the defendants from dispossessing the appellants forcibly from the disputed house, came to be dismissed by the High Court, though with a permission to file a separate suit but the petitioners had not filed any instant suit for the aforesaid reliefs.

4.4 It is submitted that therefore when the issue in respect to possession was neither before the Learned Trial Court nor before the High Court and despite the same observations were made in para 20 in respect of possession, subsequently the same has been rightly deleted in exercise of the review jurisdiction. It is submitted that the Court has an inherent power to correct the error if subsequently it is bound that some of the observations were made by error.

5. By the impugned order the High Court in exercise of powers under Section 114 read with Order 47 Rule 1 CPC has allowed the review petition and has reviewed the judgment and order dated 10.12.2013 passed in First Appeal No.241 of 2005 insofar as

deleting the observations made in Para 20 as regards the possession of the disputed property, which were in favour of the appellants – original plaintiffs. From the impugned order passed by the High Court, it appears that the High Court has deleted the observations made in para 20 as regards possession of the plaintiffs mainly/solely on the ground that the issue of possession was neither before the Learned Trial Court nor was it before the First Appellate Court and no such issue with respect to possession was framed by the Learned Trial Court. Therefore, the short question falls for consideration before this Court is, whether in the facts and circumstances of the case the High Court is justified in allowing the review application in exercise of powers under Section 114 read with Order 47 Rule 1 CPC on the aforesaid grounds?

6. While considering the aforesaid question, the scope and ambit of the Court's power under Section 114 read with Order 47 Rule 1 CPC is required to be considered and for that few decisions of this Court are required to be referred to.

6.1 In the case of *Haridas Das vs. Usha Rani Banik (Smt.) and Others*, (2006) 4 SCC 78 while considering the scope and ambit of Section 114 CPC read with Order 47 Rule 1 CPC it is observed and held in paragraph 14 to 18 as under:

> **"14.** In *Meera Bhanja* v. *Nirmala Kumari Choudhury*, (1995) 1 SCC 170 it was held that:
>
> "*8*. It is well settled that the 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. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution, this Court, in *Aribam Tuleshwar Sharma* v. *Aribam Pishak Sharma, (1979) 4 SCC 389* speaking through Chinnappa Reddy, J. has made the following pertinent observations:
>
> 'It is true there is nothing in Article 226 of the Constitution 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 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.' "

15. A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought: (*a*) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (*b*) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (*c*) on account of some mistake or error apparent on the face of the record or any other sufficient reason.

16. In *Aribam Tuleshwar Sharma* v. *Aribam Pishak Sharma, AIR 1979 SC 1047,* this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under: (SCC p. 390, para 3)

LEGAL MEDIA GROUP
BY THE PEOPLE, FOR THE PEOPLE, OF THE PEOPLE

"It is true as observed by this Court in *Shivdeo Singh* v. *State of Punjab, AIR 1963 SC 1909* 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."

17. The judgment in *Aribam case* has been followed in *Meera Bhanja*. In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long-drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in *Satyanarayan Laxminarayan Hegde* v. *Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137* were also noted:

"An error which has to be established by a long-drawn process of reasoning on points where there may 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, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ."

18. It is also pertinent to mention the observations of this Court in *Parsion Devi* v. *Sumitri Devi, (1997) 8 SCC 715* . Relying upon the judgments in *Aribam* and *Meera Bhanja* it was observed as under:

> "*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 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'."

6.2 In the case of *Lily Thomas vs. Union of India*, (2000) 6 SC 224, it is observed and held 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.

It is further observed in the said decision that the words “any other sufficient reason” appearing in Order 47 Rule 1 CPC must mean “a reason sufficient on grounds at least analogous to those specified in the rule” as was held in *Chhajju Ram vs. Neki,* AIR 1922 PC 112 and approved by this Court in *Moran Mar Basselios Catholicos vs Most Rev. Mar Poulose Athanasius*, AIR 1954 SC 526.

12.3 In the case of *Inderchand Jain vs. Motilal*, (2009) 14 SCC 663 in paragraphs 7 to 11 it is observed and held as under:

> **7.** Section 114 of the Code of Civil Procedure (for short “the Code”) provides for a substantive power of review by a civil court and consequently by the appellate courts. The words “subject as aforesaid” occurring in Section 114 of the Code mean subject to such conditions and limitations as may be prescribed as appearing in Section 113 thereof and for the said purpose, the procedural conditions contained in Order 47 of the Code must be taken into consideration. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47 of the Code; Rule 1 whereof reads as under:

"*17*. The power of a civil court to review its judgment/decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1 CPC, which reads as under:

'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 of the court which passed the decree or made the order.' "

8. An application for review would lie inter alia when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In *Rajendra Kumar* v. *Rambai* this Court held: (SCC p. 514, para 6)

"*6*. The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed."

9. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake.

> Furthermore, an application for review shall also lie for any other sufficient reason.
>
> **10.** It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.
>
> **11.** Review is not appeal in disguise. In *Lily Thomas* v. *Union of India* this Court held: (SCC p. 251, para 56)
>
> "*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."

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 clear-cut 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 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 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".

LEGAL MEDIA GROUP
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

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 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.

23. We may now notice some of the judicial precedents in which Section 114 read with Order 47 Rule 1 CPC and/or Section 22(3)(*f*) of the Act have been interpreted and limitations on the power of the civil court/tribunal to review its judgment/decision have been identified.

24. In *Rajah Kotagiri Venkata Subbamma Rao* v. *Rajah Vellanki Venkatrama Rao (1899-1900) 27 IA 197* the Privy Council interpreted Sections 206 and 623 of the Civil Procedure Code and observed: (IA p.205)

"… Section 623 enables any of the parties to apply for a review of any decree on the discovery of new and important matter and evidence, which was not within his knowledge, or could not be produced by him at the time the decree was passed, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. It is not necessary to decide in this case whether the latter words should be confined to reasons strictly ejusdem generic with those enumerated, as was held in *Roy Meghraj* v. *Beejoy Gobind Burral*[1] ILR (1875) 1 Cal 197 . *In the opinion of Their Lordships, the ground of amendment must at any rate be something which existed at the date of the decree, and the section does not authorise the review of a decree which was right when it was made on the ground of the happening of some subsequent event.*"

(emphasis added)

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 non-appealing 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 adverting 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."

26. In *Moran Mar Basselios Catholicos* v. *Mar Poulose Athanasius (supra)* this Court interpreted the provisions contained in the Travancore Code of Civil Procedure which are analogous to Order 47 Rule 1 and observed:

"*32*. … Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein.

LEGAL MEDIA GROUP BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

It may allow a review on three specified grounds, namely, (*i*) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (*ii*) mistake or error apparent on the face of the record and (*iii*) for any other sufficient reason.

It has been held by the Judicial Committee that the words 'any other sufficient reason' must mean 'a reason sufficient on grounds, least analogous to those specified in the rule'."

27. In *Thungabhadra Industries Ltd.* v. *Govt. of A.P. (supra)* it was held that a review is by no means an appeal in disguise whereof an erroneous decision can be corrected.

28. In *Parsion Devi* v. *Sumitri Devi* (Supra) it was held as under: (SCC p. 716)

"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 the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. *There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be 'an appeal in disguise'*."

29. In *Haridas Das* v. *Usha Rani Banik, (supra)* this Court made a reference to the Explanation added to Order 47 by the Code of Civil Procedure (Amendment) Act, 1976 and held:

"*13*. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it 'may make such order thereon as it thinks fit'. The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing 'on account of some mistake or error apparent on the face of the records or for any other sufficient reason'. The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that 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. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court

should exercise the power to review its order with the greatest circumspection."

30. In *Aribam Tuleshwar Sharma* v. *Aribam Pishak Sharma (Supra)* this Court considered the scope of the High Courts' power to review an order passed under Article 226 of the Constitution, referred to an earlier decision in *Shivdeo Singh* v. *State of Punjab (Supra)* and observed: (*Aribam Tuleshwar case (Supra)*, SCC p. 390, para 3)

"*3*. … It is true as observed by this Court in *Shivdeo Singh* v. *State of Punjab (Supra)*, 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."

31. In *K. Ajit Babu* v. *Union of India, (1997) 6 SCC 473,* it was held that even though Order 47 Rule 1 is strictly not applicable to the tribunals, the principles contained therein have to be extended to them, else there would be no limitation on the power of review and there would be no certainty or finality of a decision. A slightly different view was expressed in *Gopabandhu Biswal* v. *Krishna Chandra Mohanty, (1998) 4 SCC 447)*. In that case it was held that the power of review granted to the tribunals is similar to the power of a civil court under Order 47 Rule 1.

32. In *Ajit Kumar Rath* v. *State of Orissa, (1999) 9 SCC 596,* this Court reiterated that power of review vested in the

Tribunal is similar to the one conferred upon a civil court and held: (SCC p. 608, paras 30-31)

"*30*. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. *It may be pointed out that the expression 'any other sufficient reason' used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the Rule.*

31. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

33. In *State of Haryana* v. *M.P. Mohla, (2007) 1 SCC 457* this Court held as under: (SCC pp. 465-66, para 27)

"*27*. A review petition filed by the appellants herein was not maintainable. There was no error apparent on the face of the record. The effect of a judgment may have to be considered afresh in a separate proceeding having regard to the subsequent cause of action which might have arisen but the same by itself may not be a ground for filing an application for review."

34. In *Gopal Singh* v. *State Cadre Forest Officers' Assn., (2007) 9 SCC 369* this Court held that after rejecting the original application filed by the appellant, there was no justification for the Tribunal to review its order and allow the revision of the appellant. Some of the observations made in that judgment are extracted below: (SCC p. 387, para 40)

"*40*. The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Sinha, J.) that the Tribunal has travelled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect."

35. The principles which can be culled out from the abovenoted judgments are:

(*i*) The power of the Tribunal to review its order/decision under Section 22(3)(*f*) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(*ii*) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(*iii*) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(*iv*) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(*f*).

(*v*) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(*vi*) A decision/order cannot be reviewed under Section 22(3)(*f*) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(*vii*) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(*viii*) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party

> seeking review has also to show that such 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/tribunal earlier."

9. To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC, which has been elaborately discussed hereinabove. An application for review is more restricted than that of an appeal and the Court of review has limited jurisdiction as to

the definite limit mentioned in Order 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power can be exercised in the guise of power of review.

10. Considered in the light of the aforesaid settled position, we find that the High Court has clearly overstepped the jurisdiction vested in the Court under Order 47 Rule 1 CPC. No ground as envisaged under Order 47 Rule 1 CPC has been made out for the purpose of reviewing the observations made in para 20. It is required to be noted and as evident from para 20, the High Court made observations in para 20 with respect to possession of the plaintiffs on appreciation of evidence on record more particularly the deposition of the plaintiff (PW1) and his witness PW2 and on appreciation of the evidence, the High Court found that the plaintiff is in actual possession of the said house. Therefore, when the observation with respect to the possession of the plaintiff were made on appreciation of evidence/material on record, it cannot be said that there was an error apparent on the face of proceedings which were required to be reviewed in exercise of powers under Order 47 Rule 1 CPC. At this stage, it is required to be noted that

even High Court while making observations in para 20 with respect to plaintiff in possession also took note of the fact that the defendant nos. 1 and 2 – respondents herein themselves filed an application being I.A. No.1267 of 2012 which was filed under Section 151 CPC for getting the possession of the disputed house from the appellants and the said application was dismissed as withdrawn. Therefore, the High Court took note of the fact that even according to the defendant nos. 1 & 2 the appellants were in possession of the disputed house. Therefore, in light of the fact situation, the High Court has clearly erred in deleting para 20 in exercise of powers under Order 47 Rule 1 CPC more particularly in the light of the settled preposition of law laid down by this Court in the aforesaid decisions.

LEGAL MEDIA GROUP
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

11. Now so far as the submission on behalf of the respondents – original defendant nos. 1 & 2 and the reasons given by the High Court while allowing the review application and deleting para 20 that no issue was framed by the learned Trial Court with respect to possession and/or there was no issue before the Learned Trial Court with respect to the possession and therefore the observations

made in para 20 with respect to possession of the plaintiff – appellant herein was unwarranted and therefore, the same was rightly deleted is concerned first of all on the aforesaid ground the powers under Order 47 Rule 1 could not have been exercised. At the most, observations made in para 20 can be said to be erroneous decision, though for the reasons stated herein below the same cannot be said to be erroneous decision and as observed hereinabove the said observations were made on appreciation of evidence on record, the aforesaid cannot be a ground to exercise of powers under Order 47 Rule 1 CPC.

11.1 Even otherwise non-framing of the issue with respect to possession would have no bearing and/or it fades into insignificance. It is required to be noted that there were necessary pleadings with respect to possession in the plaint as well as in the written statement. Even the parties also led the evidence on the possession. The original plaintiff – appellant herein led the evidence with supporting documents to show his possession and to that, there was no cross-examination by the defendants – respondents. The defendants - respondents did not lead any evidence to show

their possession. Therefore, the parties were aware of the rival cases. On a holistic and comprehensive reading of the pleadings and the deposition of PW1 and PW2, it is unescapable that the plaintiff had intendedly, directly and unequivocally raised in its pleadings the question of possession. As observed hereinabove even in the written statement, the defendants also made an averment with respect to possession. Thus neither prejudice was caused nor the proceedings can be said to have been vitiated for want of framing the issue. As observed and held by this Court in the case of *Sri Gangai Vinayagar Temple vs. Meenakshi Ammal and Others*, *(Supra),* if the parties are aware of the rival cases, the failure to formally formulate the issue fades into insignificance when an extensive evidence has been recorded without any demur. Even the observations made by the High Court that there was no issue with respect to possession before the Learned Trial Court and/or even before the High Court is not correct. As observed hereinabove in the pleadings in the plaint and even in the written statement filed by the defendants, there were necessary averments with respect to possession. Even the parties also led the evidence on possession.

12. Hence, on the grounds stated in the impugned order, the High Court in exercise of review jurisdiction could not have without sufficient and just reasons reviewed its own judgment and order and deleted the observations made in para 20 with respect to possession.

13. Even otherwise there is ample material on record to suggest/show the possession of the appellants herein/original plaintiff. During the pendency of the appeal the respondents - original defendant nos. 1 and 2 filed an application under Section

151 CPC for dismissing the appeal filed by the appellant and for directing the appellant - original plaintiff to vacate the suit property. In the said application filed on 19.03.2012 the respondents - original defendant nos. 1 & 2 never stated that they are in possession of the disputed suit house. On the contrary, they prayed for an order directing the appellants - original plaintiff to vacate the suit property. The said application for whatever reasons was withdrawn. During the pendency of the appeal, the appellants filed an application under Order 6 Rule 17 of the CPC by which the appellants sought amendment in the relief clause as regards the

issue of permanent injunction restraining the respondents - defendant nos. 1 and 2 from dispossessing the appellants forcibly from the disputed house. The said application was opposed by the respondents – original defendants. It was submitted that the proposed averment is not necessary at the appellate stage as no averments have been pleaded in the application as to why such a prayer is sought belatedly. It was also submitted that if during the pendency of the suit the plaintiffs have neither been threatened nor have been sought to be dispossessed of the aforesaid property such a prayer at the appellate stage may not be entertained. The High Court dismissed the said application, not on merits but on the ground that the same was submitted belatedly. However, the High Court dismissed the said application with the grant of permission to file a separate suit for the aforesaid relief against the defendants.

13.1 At this stage, it is required to be noted that after a period of approximately three years from the date of disposal of the First Appeal 16.04.2005 by the High Court and after the impugned order dated 14.07.2017 passed by the High Court in review application, the defendant nos. 1 and 2 – respondents herein in fact filed a

separate suit in the Court of Learned Civil Judge, Class I, Gwalior against the appellants herein for receiving possession of the disputed house and compensation, in which the possession of the appellants has been admitted. In the said suit, it is pleaded that the plaintiffs have sent a legal notice to the said defendants -appellants herein, through the Advocate on 09.08.2017 and demanded to vacate the disputed place but have not vacated and handed over the possession of the disputed place.

14. The sum and substance of the aforesaid discussion is that the High Court has committed a grave error in allowing the review application and deleting the observations made in para 20 of its order dated 10.12.2013 passed in First Appeal No.17.04.2005 in exercise of powers under Section 114 read with Order 47 Rule 1

CPC. Under the circumstances the impugned order is unsustainable and deserves to be quashed and set aside.

15. In view of the above and for the reasons stated hereinabove, the appeal is allowed. The above impugned order dated 14.07.2017 passed by the High Court of Madhya Pradesh at Gwalior in Review

Petition No.465 of 2015 in First Appeal No.241 of 2005 is hereby quashed and set aside and consequently para 20 of the judgment and order 10.12.2013 passed in First Appeal No.241 of 2005 is hereby restored.

No costs.

……..J.
(ASHOK BHUSHAN)

……..J.
(M. R. SHAH)

New Delhi,
November 3, 2020

LEGAL MEDIA GROUP
LEGAL
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE