

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Review/Decree/TA/ 2393/2004/Banswara

Smt Gulab w/o Gautam, caste Balai, r/o Village Bokhat, Tehsil and District, Banswara

--- Petitioner

Versus

- 1- Daliya alias Dalla s/o Gautam, caste Balai, r/o village Bokhat, Tehsil and District Banswara.
- 2- State of Rajasthan through Tehsildar Banswara.

--- Non-Petitioners

Division Bench

Shri Moolchand Meena, Member

Shri Kan Singh Rathore, Member

Present:-

Shri S.K. Sethi, Advocate for the Petitioner.

Shri S.K. Sharma, Advocate for Non-Petitioner-1

Judgment

Dated 16-01-2014

1- This review petition under Section 229 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act of 1955') has been filed by the petitioner aggrieved by decision dated 17-05-2004 passed by the Division Bench of the Board in appeal No.101/2004.

2- Brief facts of the case leading to this review petition are that non-petitioner Daliya filed a suit under section 88 of the Act of 1955 against petitioner/defendant in the Court of Sub Divisional Officer, Banswara (Trial Court), wherein it was averred that the plaintiff/non-petitioner is in cultivatory possession of the disputed land and he is paying rent to the State Government. But revenue authorities inadvertently

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recorded the land in question in the name of defendant/petitioner. Therefore, the suit for declaration has been filed. The defendant/petitioner denied the facts of the suit and stated that she is purchaser of the land in question and is in possession thereof. The Trial Court, after affording opportunity of hearing to both the parties, decreed the non-petitioner's suit vide decision dated 30-12-2002. The petitioner/defendant filed an appeal against decision of the Trial Court before the Settlement Officer- cum- Ex-Officio Revenue Appellate Authority, Udaipur (the First Appellate Court), which was rejected vide decision dated 16-04-2004. The petitioner preferred 2nd appeal before the Board, which was dismissed at the level of admission by the learned Division Bench of the Board vide decision dated 17-05-2004, against which the present review petition has been filed.

4- We have heard learned counsel for both the parties on admission of the review petition.

5- The learned counsel for the petitioner, while stressing upon the facts and grounds stated in the petition, submitted that the Trial Court and the First Appellate Court had perversely and wrongly decided issue No.1 in favour of plaintiff/non-petitioner on the basis of Zamabandi Samvat 2026. The defendant/petitioner's husband Gautam had been khatedar tenant of the land in question and he was paying rent to the Government. The entire revenue record stood in the name of the petitioner and his husband. The petitioner's husband had purchased the land vide unregistered document Ex-A1 and he was in possession, so the mutation was attested in the name of the petitioner's husband in accordance of Section 19 of the Tenancy Act, 1955. But both the lower Courts and also the learned Division Bench in second appeal did not appreciate these facts and evidence. The plaintiff/non-petitioner was not in possession of the land and therefore his suit for declaration was not maintainable as no relief was sought for possession. But the Trial Court, without understanding the legal position decreed the suit which was upheld by the First Appellate Court in a

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cursory manner. The Division Bench of the Board also rejected the second appeal, at the level of admission, on the pretext that there were concurrent findings of both the lower courts. The decision of the Division Bench was neither a reasoned nor a speaking decision and it was an error apparent from the face of record. With these arguments the learned counsel for the petitioner has requested that review petition may be accepted and decision dated 17-05-2004 passed by the Division Bench may be set aside, and petitioner's appeal may be decided after calling for the records of lower courts.

6- Learned counsel for the respondent No.1 has vehemently contended that scope of review is limited. Relying upon the decision of the Hon'ble Supreme Court of India in the case of Smt. Meera Bhanja (AIR 1995 SC 455), the learned counsel has submitted 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, Civil Procedure Code, 1908. The petitioner in the present case has re-submitted all the grounds mentioned in his appeal memo, which has already been decided by the learned Division Bench. Thus it is an appeal in the garb of review petition, which is not permissible. It has also been submitted that both the lower Courts have discussed all the issues in the light of documents and evidence adduced by the parties. The Division Bench in 2nd appeal also, has summarily discussed all the key issues involved in the appeal, and it was decided by the Division Bench with a conscious view that there was no reason or ground for interfering in concurrent findings of the Courts below. Therefore, the impugned decision dated 17-05-2004 passed by the Board, does not suffer from any error which can be termed as an error apparent from the face of record. With these arguments, the learned counsel for non-petitioner has requested that review in hand, being out of the scope of provisions of section 229 of the Tenancy Act or Order 47 Rule 1 of the Civil Procedure Code, 1908, deserves to be rejected at admission level.

7- We have given a thoughtful consideration to the rival contentions made by learned counsels for both the parties and have also gone through the impugned judgment dated 17-05-2004 as well as through decisions of both the lower courts, available in the file.

8- The most important issue for deciding the present review petition is whether the decision dated 17-05-2004 passed by the Division Bench of the Board suffers from any such error or mistake, which comes under the scanner of section 229 of the Act of 1955 or Order 47 Rule 1 of the Civil Procedure Code, 1908. Both these Sections / provisions are as under:-

Section 229 of the Rajasthan Tenancy Act, 1955:

“229. Power of review by Board and other revenue courts.- Subject to the provisions of Code of Civil Procedure 1908 (Central Act V of 1908)-

(1) The Board of its own or on the application of a party to a suit or proceeding, may review and may rescind, alter or confirm any decree or order made by itself or by any of its members; and

(2) every revenue court, other than the Board, shall be competent to review any decree, order or judgment passed by such court.”

Order 47 Rule 1 of the Civil Procedure Code, 1908

“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.

(2) A party who is not appealing from a decree on 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- Since, section 229 of the Act of 1955 does not provide for grounds of review, provisions of Order 47 Rule 1 of the CPC are followed in this regard, as provided under section 208 of the Act of 1955. In view of said order 47 Rule 1, grounds for reviewing a decision may be as under:-

- (a) If there is a discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge or could not be produced by the party seeking review, at the time when the decree was passed or order made.
- (b) If there is some mistake or error apparent from the face of the record or any other sufficient reason.

10- The petitioner in the present case does not plead for discovery of any new and important matter or evidence. He pleads that there is an error apparent from the face of record in the decision dated 17-05-2004. So we have to examine the petitioner's case from this point of view whether there is any such mistake or error in the decision by the Division Bench,

which can be construed to be an error apparent from the face of record.

11- Mere perusal of decisions of both the lower courts reveals that Trial Court had framed 4 issues including relief issue in the suit and each issue has been decided with detailed discussions in the light of documentary as well as oral evidence adduced by the parties. The First Appellate Court has also concurred with the Trial Court not summarily, but after discussing all the evidence available in the file. The Division Bench of the Board, while deciding the second appeal by impugned decision, has discussed all the key issues involved in the appeal as under:-

“सम्बत 2024 से पूर्व विवाग्रस्त आराजी प्रत्यर्थी दलिया के नाम राजस्व अभिलेख में दर्ज थी। सम्बत 2026 में वादी का नाम हटा कर अपीलार्थी के पति गौतम बलाई का नाम किस आधार पर दर्ज किया गया, इस तथ्य को अपीलार्थी पक्ष साबित करने में असफल रहे हैं। अपीलार्थी के पति के नाम से खोला गया नामान्तरकरण दिनांक 4-1-62 को तहसीलदार द्वारा निरस्त कर दिया गया था। अपीलार्थी को यदि इस नामान्तरकरण से कोई आपत्ति होती तो उसे सक्षम न्यायालय में अपील करनी चाहिये थी। लेकिन नामान्तरकरण निरस्त करने के बाद रिकॉर्ड में प्रत्यर्थी का नाम हटा कर अपीलार्थी का नाम दर्ज करना अधीनस्थ न्यायालय ने विधि विरुद्ध माना है जिससे हम पूर्णतः सहमत हैं।
फलस्वरूप अपील ग्राह्यता के स्तर पर ही खारिज की जाती है।”

No doubt, the appeal has been summarily rejected at admission level. Rejection of an appeal, summarily, at admission level is not an error to be reviewed. Section 226 of the Act of 1955 empowers the Board to reject an appeal summarily. The said section 226 is as under:-

“226. Power of Board to reject an appeal summarily.- The Board may either admit an appeal or may summarily reject it.”

Thus the decision dated 17-05-2004 by the Board is well within the four-corners of law. It is not a decision by

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mistake, but it is a decision with conscious consideration, for which reasons have been recorded by the Division Bench with specific reference to the documentary evidence available in files of lower courts. Now the issue is whether a well considered decision can be subjected to review proceedings?

10- The Scope of the review under Section 229 of Rajasthan Tenancy Act, 1955 or Section 86 of the Rajasthan Land Revenue Act, 1956, read with Order 47 Rule 1 of the Civil Procedure Code, 1908 is very limited and there is a long series of adjudications by Hon'ble High Court and Hon'ble Supreme Court including case of Smt Meera Bhanja, wherein it has been held that even an erroneous view taken by the court on a particular point can not be basis of review. It has also been clarified by the Hon'ble Supreme Court that which type of error can be considered to be an error apparent on the face of the record. The basic principles laid down by the Hon'ble Apex Court in the case of Smt. Meera Bhanja (AIR 1995 SC 455=1995 (1) SCC 170), can be summarized as under:-

- (a) That the review proceedings are not a by-way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1, CPC.
- (b) 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.

- (c) It has to be kept in view that an error apparent 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 points where there may conceivably be two opinions. 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 on the face of the record.

11- It has also been held by the higher level courts that even an erroneous decision cannot be a ground of review. The Hon'ble High Court for Rajasthan in 2005 RBJ (12) page 290, has held as under:-

“The scope of review is very limited. It has been clearly held in a catena of cases that a judgment order may be open to review under Order 47 Rule 1 CPC 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 process of reasoning can hardly be said to be an error apparent on the face of record justifying exercise of power of review. In exercise of jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be re-heard and corrected. There is clearly distinction between ‘an erroneous decision’ and ‘an error apparent on the face of the record.’ While the former can be corrected by higher forum, the latter can be corrected by exercise of review jurisdiction. A review petition has, therefore, a limited purpose and can not be allowed to be an appeal in disguise.”

12- If for the sake of arguments, the decision dated 17-05-2004 passed by the Division Bench is based on erroneous appreciation of the evidence, even then it does not come under scanner of review. Recently in a decision dated 23-04-2013 passed in the case of Union of India Vs. Sandur Manganese &

Iron Ores Ltd. & Ors. {reported as 2013 STPL(Web) 351 SC}, the Hon'ble Supreme Court of India, following its own decision in the case of Parsian Devi & Ors versus Sumitri Devi & Ors reported as (1997) 8 SCC 715, has repeated its view that review can not be an alternate of regular appeal and merits of the case can not be re-considered and an erroneous decision can not be corrected in review proceedings. We deem it proper to reproduce hereunder para 22 and 23 of decision dated 23-04-2013 given by the Hon'ble Supreme Court of India in case of Union of India versus Sandur Manganese & Iron Ores Ltd. & Ors. {2013 STPL(Web) 351 SC} as under:-

*“22. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. In **Parsian Devi & Ors. vs. Sumitri Devi & Ors.**, (1997) 8 SCC 715, this Court held 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".

23. This Court, on numerous occasions, had deliberated upon the very same issue, arriving at the conclusion 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 of CPC.”

13- Thus it has been repeatedly and categorically held by the higher level courts including Hon'ble Supreme Court of India that ‘an erroneous decision’ and ‘an error apparent on the face of record’ are different from each other and there are different sets of legal provisions for dealing with both the things. If the decision suffers from ‘an error apparent on the

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face of record', it can be corrected in review proceedings but if the decision is erroneous or is based on erroneous view taken by the Court on some documents, facts, evidence or law; it cannot be corrected in review proceedings. Further appeal or writ is the only treatment for erroneous decisions. Review proceedings cannot take place of an appeal or a writ petition.

14- As discussed in para 10 and 11 hereinabove, after going through the impugned decision and considering all the facts mentioned in review petition and arguments advanced by the learned counsel for the petitioners, we are unable to find any mistake in the impugned decision which can be said to be an error apparent of the face of the record. This Court is of the considered view that the impugned decision dated 17-05-2004 passed by the learned Division Bench of this Court does suffer from any 'error apparent on the face of record', nor any new and important matter or evidence has been put forth by the petitioners, which was not produced by him at the time when the appeal was heard and decided. Hence, this review petition deserves to be rejected.

15- Consequently the review petition is rejected.

Pronounced in the open Court.

(Kan Singh Rathore)
Member

(Moolchand Meena)
Member