

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**Review/Decree/TA/8774/2011/Jhalawar**

1- Ishwar Singh s/o Man Singh

2- Kamal Singh s/o Man Singh

Both minors through guardian and mother Smt. Manna Bai
w/o Man Singh by caste Rajput residents of village Pagaria
Tehsil Pachpahar, District Jhalawar.

---- Petitioners**Versus**

1- Ram Singh s/o Moti Lal caste Rajput,

2- Ramgopal s/o Shivnarain caste Brahmin,

3- Arjun Singh s/o Bhanwar Singh caste Rajput,

4- Shiv Singh s/o Radha Singh caste Rajput,

All residents of village Pagaria Tehsil Pachpahar,
District Jhalawar.

5- State of Rajasthan through Tehsildar Pachpahar.

---- Non-petitioners**Single Bench****Shri Moolchand Meena, Member**

Present:-

Shri Ashok Agarwal, Advocate for the petitioners.

Shri Vikas Parasar, Advocate for non-petitioners.

Decision

Dated: 06-07-2012

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 applicant aggrieved by order dated 5th December, 2011 passed by the Division Bench of this Board in appeal No. 11563/2007. One member of the Division Bench has since retired; therefore, the present review petition has been heard and is being decided by this Court as single member.

2- Brief facts of the case leading to this review petition are that petitioners/plaintiffs filed a suit for declaration and permanent injunction in the Court of Sub-Divisional Officer, Bhawanimandi regarding disputed land consisting of khasra number 1022 and 590 measuring to 5 Bighas and 11 Biswas. The basis of the suit was that the land in question was purchased by Moti Lal in the name of his minor sons- Man Singh and Ram Singh, and for this reason, it was ancestral land of the plaintiffs. But, Man Singh sold his 1/2 share of the disputed land without any authority vide registered sale deed dated 29th June 2006. The Trial Court after hearing both the parties, treating the sale deed dated 10th December, 2002 as void, decreed the suit. Present non-petitioners Arjun Singh and Shiv Singh preferred an appeal before the Settlement Officer-cum-Revenue Appellate Authority, Bhilwara. The appeal was allowed by the First Appellate Court vide decision dated 29th August, 2007 and the decree and decision dated 29th June 2006 passed by the Trial Court was set aside. The petitioners filed second appeal before the Board, which was decided on 5th December, 2011 as appeal No.11563/2007. The appeal was disallowed and the decision of the First Appellate Court was upheld. The present review petition has been filed against decision dated 5th December 2011 of the Board.

3- Learned counsels for both the parties were heard.

4- Learned counsel for the petitioners, while repeating the facts and grounds mentioned in their review petition, has argued that the division bench has erred in concluding that the disputed land was not proved to be ancestral property purchased by Moti Lal. Moti Lal, himself has appeared as witness and has admitted that he had purchased the land in the name of his minor sons. Thereafter, it was responsibility of non-petitioners to prove that the land was not an ancestral property. No evidence was submitted by the defendants/non-petitioners in rebuttal of Moti Lal's admission. It has also been submitted by the learned counsel that the division bench has erred in holding that the land in question was self-acquired property of Man Singh. As per

contentions raised by the learned counsel, the division bench has also erred in concluding that sale deed executed by Man Singh was valid on the ground that the purchasers were not aware of stay order. It has also been submitted that the division bench has committed illegality in concluding that declaration of sale deed is exclusive jurisdiction of Civil Court. It has been submitted that Revenue Courts can ignore the void sale deed and only voidable sale deeds are required to be cancelled by the Civil Courts. With these contentions, the learned counsel for the petitioners has requested to accept the review petition and set aside the judgment and decree dated 5th December, 2011.

5- The learned counsel for the non-petitioners has submitted that non-petitioners are *bonafide* purchaser of the disputed land through registered sale deed. The land was purchased from recorded khatedar and such a sale deed cannot be said to be void. Therefore, the division bench has rightly decided that sale deed dated 10th December, 2002 is voidable and it is not void. The scope of review is limited and a decision can be reviewed only if there is an error apparent on the face of record. It has been submitted that there is no such error in the decision dated 5th June, 2012 which can be treated as an error apparent on the face of record. Therefore, the review petition is forceless and deserves to be rejected.

6- I have gone through the record of the case available in the file and have given a thoughtful consideration to the rival contentions made by both the learned counsels for the parties. The impugned order passed on 5th December, 2012 by the division bench was perused meticulously. The petitioner in its review petition and also during verbal arguments; has raised all those issues which have been dealt and decided by the division bench in its decision dated 5th June, 2012. As regards the land's status as an ancestral property, the division bench has clearly opined that- ".... भूमि मानसिंह व रामसिंह के संयुक्त खाते में दर्ज। ऐसा कोई कोई राजस्व अभिलेख प्रकरण में प्रस्तुत नहीं हुआ है, जिससे प्रमाणित हो सके कि भूमि कभी उपरोक्त सहखातेदारों के पूर्वजों के नाम दर्ज रही हो।"

Since the original sale deed was neither produced nor got summoned, it was not proved by record that the land was purchased by Moti Lal out of joint family or his own financial resources. Though Moti Lal has appeared as witness but he is not stable in his statement. The division bench has discussed this aspect of his statement in para 7 of the impugned decision. The division bench while authoring the impugned decision has categorically has opined that, "मौखिक बयानों के आधार पर भूमि का पैतृक होना प्रमाणित नहीं होता है। उक्त भूमि पैतृक नहीं होने एवं स्वअर्जित होने सम्बन्धी निष्कर्ष अधीनस्थ न्यायालय द्वारा स्थापित किया गया है, जो त्रुटिहीन एवं विधि सम्मत है।" To conclude whether the disputed sale deed dated 10th December, 2002 was void or voidable, the division bench, after discussing the facts of the case in details, has opined that there is no such document on the record which can prove that the purchasers, having knowledge thereof, have purchased the land during stay from a competent court. They are *bonafide* purchasers and such a sale deed which has been executed by the recorded khatedar, cannot be said to be void document. Cancellation of such a sale deed falls within jurisdiction of Civil Court; and Revenue Courts cannot ignore such a registered sale deed unless it is cancelled or declared to be void by the competent Civil Court. Thus all the issues raised by the petitioners in the present review petition, have already been discussed and decided by the division bench while authoring the impugned decision dated 5th June, 2012. The petitioners have again raised all the issues which have been decided already.

7- Scope of the review under Section 229 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 AIR 1995 SC 455, wherein it has been repeatedly held that a review cannot take place of an appeal. I deem it proper to reproduce here, para 8 of Hon'ble Supreme Court's decision in the case of Smt. Meena Bhanja (AIR 1995 SC 455), which is as under:-

"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 of India, this Court, in the case of **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, AIR 1979 SC 1047**, speaking through Chinappa Reddy, J., has made the following pertinent observations (para 3):*

“It is true there is nothing in Article 226 of the Constitution of to 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.”

*Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, 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. We may usefully refer to the observations of this Court in the case of **Satyanarain Laxminarain Hegde v. Mallikarjun Bhavanappa Tirumale, AIR 1960 SC 137**, wherein, K. C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:*

“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. 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.”

The basic principles laid down by the Hon’ble Apex Court in the pronouncement cited as above, 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.

Thus it is clear that only an error apparent on the face of the record can be the basis of review. 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, I am unable to find any mistake in the impugned decision which can be said to be an error apparent of the face of the record.

10- It has been held by the higher level courts that even an erroneous decision can not 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.”

Thus it has been categorically held by the Hon'ble High Court in above authority that an erroneous decision and an error apparent on the face of record are two different things. **An error in the decision, which is not apparent but which has to be detected and proved through a long process of legal as well factual arguments, cannot be said to be an error on the face of record.**

11- In 2005 (1) RRT 454 (SC), as cited in 2020 RRD 212, the Hon'ble Supreme Court has held that even an erroneous view taken on a particular issue, cannot be a ground for review.

12- Thus, precisely, it is a well settled principle of law 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 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.

13- In view of the foregoing discussions, this Court is of the considered view that the impugned decision dated 5th December, 2012 passed by the division bench of this Court in appeal No.11563/2007 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 revisions were heard and decided. Hence, this review petition deserves to be rejected.

14- Consequently the review petition is rejected.

Pronounced in the open Court.

(Moolchand Meena)
Member