

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 31ST OCTOBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

REVIEW PETITION NO.200033 OF 2022
IN
WRIT PETITION NO.200404 OF 2019 (GM-CPC)

BETWEEN:

1. SYED ASADULLAH SARMASTH
S/O. NASEERUDDIN SARMASTH
SINCE DECEASED THROUGH LRS.,

(A). S.S.HASSAN NIZAMI SARMAST
S/O. S S.ASADULLAH SARMAST
AGE: 67 YEARS, PENSIONER
R/O. SAGAR, TQ. SHAHAPUR
DIST. YADGIR, NOW RESIDING AT
H.NO.4-602/23/2/10
OPP. BAREY HILL, MOHAMMADI COLONY
GULMOHAR HILL, KALABURAGI-585102
(ELDER SON AND GPA HOLDER).

(B). S.S.AMJAD SARMAST
S/O. S.S.ASADULLAH SARMAST
AGE: 59 YEARS
R/O. PLOT NO.104, OPP. BAREY HILL
MOHAMMADI COLONY
GULMOHAR HILL, KALABURAGI-585102.

(C). S.S.FAREEDUDDIN SARMAST
@ SAKHI SARMAST
S/O. S.S.ASADULLAH SARMAST
AGE: 52 YEARS
R/O. QUARTER NO.4, AIWAN-E-SHAHI
NEAR GOVT. H.P.S
KALABURAGI-585102.

(D). SMT. ZEENATH BEGUM
W/O. MD. AZEEZULLAH KHAN NAZAMI
AGE: 62 YEARS
R/O. H.NO.19-3-117/7/C
JAHANUMA, NEAR BOYS TOWN SCHOOL
HYDERBAD (TELANGANA)-585 102.

(E). SMT. HOOR BEGUM
W/O. QUAZI MD. ABDUL REHMAN
AGE: 60 YEARS
R/O. H.NO.5-1418
NEAR MEHEBOOB SUBHANI CHILLA
MEHABOOB NAGAR COLONY
KALABURAGI-585 102.

(F). S.S. SAYEEDUDDIN SARMAST
S/O. S.S.ASADULLAH SARMAST
AGE: 50 YEARS
R/O. H.NO.5-992/29/249
NEAR WATER TANK ANJUMAN ISLAM SCHOOL
YADULLAH COLONY,
KALABURAGI-585 102.

(G). SMT. DURRAY SHAWAR,
W/O. SYED SAFULLAH HUSSAINI
AGE: 52 YEARS
R/O. H.NO.4-601/66/A2
BASAVESHWAR COLONY

NEAR BASAVESHWAR TEMPLE
KALABURAGI-585 102.

(H). SMT. PARVEEN SULTANA
W/O. MD. ASLAM
AGE: 48 YEARS
R/O. H.NO.5-992/39A
YADULLAH COLONY
NEAR WATER TANK,
KALABURAGI-585 102.

(I). SMT. KAUSAR SULTANA
W/O. BAQAR QUADRI
AGE: 46 YEARS
C/O. AL-HAJ D. NARSHEERUDDIN
H.NO.3-992/31 NEAR NASHEEMAN
HIGH SCHOOL YADULLAH COLONY
KALABURAGI-585 102.

... PETITIONERS

(BY SRI RAMCHANDRA K., ADVOCATE)

AND:

1. GULAM RASOOL WAHID
S/O. S.S.NASEERUDDIN SARMAST
SINCE DECEASED THROUGH LRS.,

(A). SHAIZADI BEGUM
W/O. LATE GULAM RASOOL WAHID
AGE: 56 YEARS, OCC: HOUSEHOLD
R/O. SOLAPUR-413001
TQ. & DIST. SOLAPUR
(MAHARASHTRA STATE)

(B). NIZAM S/O. LATE GULAM RASOOL WAHID
AGE: 36 YEARS, OCC: BUSINESS
& AGRICULTURE, R/O. SOLAPUR-413001
TQ. & DIST. SOLAPUR (MAHARASHTRA STATE)

(C). KHISAR PASHA SARMAST
S/O. LATE GULAM RASOOL WAHID
AGE: 31 YEARS, OCC: BUSINESS &
AGRICULTURE, R/O. SOLAPUR-423001
TQ. & DIST. SOLAPUR (MAHARASHTRA STATE)

(D). MUNAWAR PASHA SARMASTH
S/O. LATE GULAM RASOOL WAHID
AGE: 29 YEARS, OCC: BUSINESS &
AGRICULTURE, R/O. SOLAPUR-423001
TQ. & DIST. SOLAPUR (MAHARASHTRA STATE)

2. ROOHA BEGUM
W/O. SYED JAMEEL AHMED
SINCE DECEASED THROUGH HER LRS.,

(A). SYED KHALEEL AHMED @ BABAR
S/O. SYED JAMEEL AHMED
AGE: 46 YEARS, OCC: DRIVER
R/O. SHAREEF COTTAGE
H.NO.9/10/158/311
DILWARSHA NAGAR, NEAR LEADING
HIGH SCHOOL ENGLISH MEDIUM
RISALA BAZAR, GOULKONDA
HYDERABAD-560008 (TELANGANA)

(B). SYED MUZAMIL AHMED
S/O. SYED JAMEEL AHMED
AGE: 43 YEARS, OCC: PRIVATE SERVICE
R/O.RISALA BAZAR ROAD, OPP. SHANAWAZ
BEEF SHOP, NEAR SHAKEEL DOODH-DHAI
SHOP, DILWARAHA NAGAR GOLKUNDA
HYDERABAD-560008 (TELANGANA)

(C). SYED JALEEL AHMED
S/O. SYED JAMEEL AHMED
AGE: 40 YEARS, OCC: PRIVATE SERVICE
R/O. DEVADAS SCHOOL
NEAR COMMUNITY HALL, GOLKUNDA
HYDERABAD-500008 (TELANGANA)

(D). SYED ISHAQ AHMED
S/O SYED JAMEEL AHMED
AGE: 38 YEARS, OCC: PRIVATE SERVICE
R/O.H.NO.9-10-224/189/190
BEHIND BHAIISULKI DOODI
NEAR DARGA HAZRAT SYED SADATULLA
HUSSAINI, GOLKUNDA
HYDERABAD-560008, (TELANGANA)

(E). AFSAR BEGUM
W/O. MOHAMMED NAZER
AGE: 35 YEARS, OCC: HOUSEHOLD
R/O. BEHIND AKHATARI MASJID
NEAR ELECTRIC TRANSFORMER &
HYDER BASHA HOUSE
OPP. GOVT. BOYS URDU HIGH SCHOOL
PLAY GROUND, BALAHISSAR RISAALA BAZAR
GOLKUNDA, HYDERABAD-500008 (TELANGANA)

3. ZULEKHA BEGUM
W/O. S.AHEDULLA HUSSAINI
SINCE DECEASED THROUGH HER LRS.,

(A). SYED MAHEBOOB PASHA @ BABA
S/O. SYED AHMEDULLA HUSSAINI
AGE: MAJOR, OCC: BUSINESS
C/O. SYED GOUSEPIRAN
H.NO.9-10-23, 2/4 GOLKUNDA KILA
DEVADASPURA, NEAR COMMUNITY
HALL, HYDERABAD-500008 (TELANGANA).

(B). PUTLI BEGUM W/O. SYED GOUSE PIRAN
AGE: MAJOR, OCC: HOUSEHOLD
C/O. SYED GOUSE PIRAN
H.NO.9-10-23-2/4 GOLKUNDA KILA
DEVADASPURA, NEAR COMMUNITY HALL,
HYDERABAD-500008 (TELANGANA).

(C). NOOR JAHAN BEGUM
W/O. SYED ZAMEERUDDIN FOREST
CHOUKIDAR, AGE: MAJOR

OCC: HOUSEHOLD, R/O. OPP. SHAH
JEELANI DARGA HOUSE OF MEHBOOB
SAB BOMBAYWALE, M.S.K.MILL,
JEELANABAD
GULBARGA-585102

4. GANGAPPA S/O. CHANDAPPA
AGE MAJOR
OCC: AGRICULTURE
R/O. VILLAGE SAGAR (B)
TQ. SHAHAPUR-585323
DIST. YADGIR

5. YASEEN KHAN S/O. ABDUL KHAN
SINCE DECEASED THROUGH HIS LR.,
ISMAIL S/O. YASEEN KHAN
AGED ABOUT 65 YEARS
OCC: AGRICULTURE
R/O. VILLAGE SAGAR
SHAHAPUR TALUK
YADGIR DISTRICT -585323.

6. SHARNAPPA S/O. HONAPPA KODDLUR
AGE: MAJOR
OCC: AGRICULTURE
R/O. VILLAGE SAGAR (B)
TQ. SHAHAPUR-585323
DIST. YADGIR.

... RESPONDENTS

THIS REVIEW PETITION IS FILED UNDER SECTION 114 READ WITH ORDER XLVII RULE 1 OF THE CODE OF CIVIL PROCEDURE PRAYING TO ALLOW THE REVIEW PETITION BY SETTING ASIDE THE ORDER DATED 12.01.2022 IN WRIT PETITION NO.200404 OF 2019.

THIS PETITION COMING ON FOR ADMISSION, THIS DAY, THROUGH VIDEO CONFERENCING, THE COURT MADE THE FOLLOWING:

O R D E R

This review petition is filed by the petitioner seeking review of order dated 12th January, 2022 made in Writ Petition No.200404 of 2019, whereby this Court disposed of the writ petition reserving liberty to the petitioners herein to file appropriate application before the First Appellate Court to bring the legal representatives of deceased-Gulam Rasool s/o Naseeruddin Sarmast.

2. Heard Sri Ramachandra K, learned counsel appearing for the petitioners who argued that the petitioners are plaintiffs in Original Suit No.225 of 1992 before the trial Court and the said suit is filed seeking partition and separate possession in respect of the suit schedule property whereby the trial Court decreed the Suit in part. Being aggrieved by the same, the petitioners herein have filed Regular Appeal No.6 of 2016 and the respondent No.2 herein has filed Regular Appeal No.9 of 2016 before the First Appellate Court and the application filed by the parties to bring legal representatives of respondent No.1 herein was allowed in Regular Appeal No.6 of 2016 however, the same was rejected in Regular Appeal No.9 of 2016. Accordingly, petitioners have sought for review of the order dated 12th January, 2022 passed in writ petition No.200404 of 2019.

3. Having heard the learned counsel appearing for the parties and taking into consideration that the fact the relief sought for by the petitioners herein is with regard to partition and separate possession in respect of the suit schedule property, I am of the view that there is no error apparent on the face of the order dated 12th January, 2022. In that view of the matter, I do not find any acceptable ground to review the order dated 02nd September, 2022 in this Review Petition, as there is no error apparent on the face of the record as required under Section 114 of Code of Civil Procedure. At this juncture, it is pertinent to refer to the dictum of the Hon'ble Apex Court in the case of SHRI RAM SAHU (DEAD) THROUGH LRS VS VINOD KUMAR RAWAT reported in (2020) SCC ONLINE SC 896, wherein, at paragraphs 26 to 35 of the judgment, it is observed thus:

"26. *In Moran March, Basselios Catholics v. March, 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.

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. Government. 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 Parison Devi v. Sumitri Devi (supra) it was held as under:*

"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 selfevident 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 3031) "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:

"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:

"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 selfevident 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."

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."

4. In view the law declared by the Hon'ble Supreme Court in the aforementioned judgment, I am of the view that the petitioner herein has not made out a case for reviewing the order dated 12th January, 2022. In the result, the revision petition fails and accordingly, dismissed.

**Sd/-
JUDGE**

Inn