

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 5th OF JANUARY, 2024

CIVIL REVISION No. 175 of 2020

Between:-

- 1. MADUSUDAN PITRE S/O SADASHIV @ ADHOCHAJ BHATT PITRE, AGED ABOUT 58 YEARS, BENIGANJ MOHALLA CHHATARPUR (MADHYA PRADESH)**
- 2. KRISHNA SADASHIV PITRE S/O SADASHIV @ ADHOCHAJ BHATT PITRE, AGED ABOUT 63 YEARS, PRESENT R/O ASSISTANT PROFESSOR, RASAYAN VIBHAG, SAGAR VISHWAVIDHYALAYA SAGAR (MADHYA PRADESH)**
- 3. GOPAL PITRE S/O PURUSHOTTAM MAHADEV PITRE, AGED ABOUT 83 YEARS, OCCUPATION: THR. SURESH PITRE, E-341, IN FRONT OF MURLIPURA RAJKIY MAHAVIDHYALAYA JAIPUR (RAJASTHAN)**
- 4. SHRINIVAS PITRE S/O LATE VINAYAK PITRE, AGED ABOUT 47 YEARS, R/O E-31/5, JITENDRA APARTMENT GANESH COLONY DADAVADI RAMBAGH INDORE (MADHYA PRADESH)**
- 5. SMT. MEENA D/O LATE VINAYAK PITRE, AGED ABOUT 44 YEARS, R/O GWALIOR (MADHYA PRADESH)**
- 6. BASANT PITRE S/O PURUSHOTTAM MAHADEV PITRE, AGED ABOUT 82 YEARS, R/O L.I.G. 157, KOTRA SULTANA, SULTANABAD BHOPAL (MADHYA PRADESH)**
- 7. HARISH @ SON PITRE S/O PURUSHOTTAM MAHADEV PITRE, AGED ABOUT 56 YEARS, R/O KELKAR VAKEEL KA BADA KHASKI BAZAR GWALIOR (MADHYA PRADESH)**

8. SMT. INDU PITRE W/O LATE KASHINATH VASUDEV PITRE, AGED ABOUT 78 YEARS, R/O NEAR KACHYANA SCHOOL PHUTERA WARD DAMOH (MADHYA PRADESH)

9. ATUL KASHINATH PITRE S/O LATE KASHINATH VASUDEV PITRE, AGED ABOUT 50 YEARS, R/O NEAR KACHYANA SCHOOL PHUTERA WARD DAMOH (MADHYA PRADESH)

10. PAVAN KASHINATH PITRE S/O KASHINATH VASUDEV PITRE, AGED ABOUT 46 YEARS, R/O NEAR KACHYANA SCHOOL PHUTERA WARD DAMOH (MADHYA PRADESH)

11. PRASHANT KASHINATH PITRE S/O KASHINATH VASUDEV PITRE R/O NEAR KACHYANA SCHOOL PHUTERA WARD DAMOH (MADHYA PRADESH)

12. SMT. ANUPAMA SINGE D/O LATE KASHI NATH VASUDEV PITRE, AGED ABOUT 48 YEARS, R/O CHANDRABHAN KA HATA, PREMGANJ SIPRI BAZAR JHANSI (UTTAR PRADESH)

.....PETITIONERS

(BY SHRI RAJKAMAL CHATURVEDI - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH THR.
COLLECTOR CHHATARPUR M.P. FURTHER
THR. THE OFFICER IN CHARGE SAHAYAK
BHU MAPAN ADHIKARI DIST. CHHATARPUR
(MADHYA PRADESH)

.....RESPONDENT

(SHRI V.P. TIWARI – GOVERNMENT ADVOCATE)

This review application coming on for order this day, the court passed the following:

ORDER

1. A co-ordinate bench of this Court by order dated 04.08.2022 in Civil Revision No. 175/2020 Madhusudan Pitre and ors. vs State of M.P. allowed the revision and set aside the order dated 17.03.2020 (Annexure P/1) passed in MJC No. 83/2019 (MJC No. 161/2019) In State Vs. Madhusudan Pitre and ors. by the learned 5th Additional District Judge, Chhatarpur, District Chhatarpur, whereby, an application preferred by the respondent / State under Section 5 of Limitation Act accompanying an appeal under Section 96 of the Code of Civil Procedure was allowed.

2. The State has filed I.A. No. 7818/2023 on 16.05.2023 seeking review / recall / modification of order dated 04.08.2022. In substance, as per the application one Nageshwar Sadashiv Pitre filed a Civil Suit bearing No. 4A/1997 against Madhusudan and ors. in which State Government was not a party. This civil suit was decided on 24.12.2005 whereby the trial Court held that plaintiff is not entitled for any declaration of title in respect of specific part of suit property, however, held that property belongs to undivided joint family property between plaintiff and defendant. Copy of that order is Annexure is P-2. No appeal was filed but defendant No. 1 Madhusudan filed an application before the

Nazul Officer for issuance of No Dues Certificate in respect of the suit land in the above-mentioned civil suit and that certificate was denied on the basis that the land belonged to State Government and there was no decree regarding the specific part of land. It was also mentioned in the order dated 26.12.2017 (Annexure P-4) that Nazul Suit No. 37-A Plot No. 203 area 190 square meters belongs to the State Government. The order is Annexure P-4. Against that order Madhusudan approached the Collector under the provision of revenue circular book. The matter was remanded back by the Collector vide order dated 13.07.2018 for considering the same on the basis of merit, copy of order is Annexure P-6, thereafter, the Nazul officer again declined issuance of NOC vide order Annexure P-7 dated 09.05.2019 then an application was made before Assistant Land Survey Officer Nazul Inquiry Branch, Chhatarpur and the Assistant Land Survey Officer recommended to file appeal against the judgment and decree passed by Civil Court in Civil Suit No. 4-A/1997 and thereafter, following due process, civil appeal has been filed along with application for condonation of delay.

3. It is mentioned in Para 3 of the Civil Appeal (Annexure P-9) that respondent/revisioner/petitioner without impleading necessary party in the matter succeeded to get judgment and decree and also took same

ground in Para 5 of appeal that State Government being necessary and affected party was not heard.

4. The memo of appeal along with application for condonation of delay is on record (Annexure P-10). The lower appellate Court by impugned order dated 17.03.2020 allowed the application for condonation of delay because of the circumstances that in the civil suit in which State Government was not made a party.

5. It is submitted by learned counsel for appellant that Ist appellate Court after due consideration had allowed the application for condonation of delay. The order of the Ist appellate Court was challenged by way of Civil Revision No. 175/2020 and this Court allowed the same on 04.08.2022 on the ground that on 03.10.2017, first time application for issuance for NOC was submitted by the petitioner MadhuSudan before the Nazul Officer and on 26.12.2017 (Annexure P-4), the Nazul Officer rejected the same and thereby the limitation would start from 03.10.2017 and not from 24.06.2019. It is submitted by the review applicant/State that it is well settled position of law that no decree obtained by committing fraud, cheating may be allowed to be on record and if any fraud is committed then it can be set aside at any point of time by any Court of law.

6. It is further submitted that in the present case it is clear that civil suit should have been dismissed for non-joinder of necessary party. It is well settled law that in condoning the delay, the Court should have adopted liberal approach and substantial justice should not be ignored.

7. Learned counsel for State has relied on following citations :-

(a) **Mumbai International Airport Pvt. Ltd. vs. Regency Conventional Centre and Hotels Pvt. Ltd. & Ors.**

2010 (7) SCC 417 in which in Para 15 the Hon'ble Apex Court has laid down as to who is a necessary party and it is one without whom no effective decree could be passed at all.

(b) **S.P. Chengalvaraya Naidu (Dead) by LRs. vs. Jagannath (Dead) by L.Rs. and Ors. (1994) 1 SCC 1** in

which it has been held in Para 8 that non-disclosure of relevant documents would amount to undue advantage by fraud on Court and other party.

(c) **Shiv Raj Singh (deceased) through LRs. vs Union of India and Ors. 2023 (10) SCC 531** in which in Paras 17 to

28 Hon'ble Supreme Court has under Section 5 of Limitation Act laid down as to when application should be allowed, when delay should be condoned, when delay should not be condoned and what is sufficient cause in this context and also

held that State stands on a different footing than individual person when there is reasonable ground.

(d) **Rasiklal Manikchand Dhariwal and anr. vs. M.S.S. Food Products 2012 (2) SCC 196** in which it is held in Para 61 that before filing review in Supreme Court objection should be filed in concerned High Court.

(e) **Rajender Singh vs. LT. Governor Andaman and Nicobar Islands and ors. (2005) 13 SCC 289** (Para 15 to 16) in which High Court's power of review of its own order inheres have been discussed and held that High Court is having preliminary jurisdiction to prevent miscarriage of justice. In case of Rajender Singh (Supra) review petition filed by appellant against order of High Court allowing writ petition and dismissing petition of appellant before CAT in which appellant had succeeded and CAT had ordered regularization of service of appellant teacher from the date of joining and also grant of senior scale but review petition was dismissed by High Court. Hon'ble the Supreme Court held that several important issues were left out in order and materials on record was ignored by High Court, held on facts, High Court not justified in dismissing the review petition.

High Court's order suffers from error apparent on the face of the record and non-consideration of relevant document, if claim of appellant is not accepted, appellant will suffer immeasurable loss and injury, appeal was allowed and matter was remanded to the High Court for fresh consideration.

8. It is further submitted by learned counsel for the State that though Hon'ble Court allowed the civil revision on the basis of citing several judgments but root (crux) of the matter may not be ignored. Collusion between the parties in trial Court is there, therefore, revision may be allowed and the order dated 04.08.2022 be set aside. Affidavit is filed.

9. The learned counsel for the revisioner Madhusudan argued that if any error was committed by this Court in its order dated 04.08.2022 then this Court cannot review a well reasoned order because there is no prima facie error which can be corrected as error apparent on face of record, in fact, if any error is there, scope lies in the appeal and not in review.

10. After having heard learned counsel for rival parties and on perusal of the record it is seen that the learned Ist Civil Judge Class I Chhatarpur in Civil Suit No. 4-A/97 Nageshwar and ors. vs. Madhusudan and ors. had not dismissed the suit in fact it has held that the suit property is a joint family property and this decree is of 24.12.2005 then accepting the argument of learned counsel for the State that the parties kept quite and

after about 9 years they filed application for NOC which was registered on 03.10.2017 then on date the Nazul Officer should have taken appropriate steps to seek for setting aside of the order but in the appellate Court, application was filed on 21.08.2019, therefore, if the co-ordinate Bench of this Court vide order dated 04.08.2022 in its own wisdom not found the ground sufficient but which were considered sufficient by the learned 5th Additional Judge then this is a matter of discretion and for argument sake if the discretion has been wrongly exercised by co-ordinate Bench of this Court then the remedy would lie before the Hon'ble appellate Court.

11. There is a fine and settled difference between error apparent on the face of the record and on erroneous order. In considered view of this Court, the order dated 04.08.2022 for argument's sake may be erroneous order but there is nothing as error apparent on the face of the record in this case, in considered view of this Court.

12. In **Arundev Upadhyay vs. Integrated Sales Service Limited 2023**

(8) SCC 11 Hon'ble the Supreme Court has held thus :-

“31. Another case which may be briefly dealt with is Parsion Devi v. Sumitri Devi [Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715] , where, this Court ruled that under Order 47 Rule 1CPC, 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. It also observed that a review petition cannot be allowed to be treated as an appeal in disguise.

32. A series of decisions may also be referred to wherein, it has been held that power to review may not be exercised on the ground that decision was erroneous on merits as the same would be the domain of the court of appeal. Power of review should not be confused with appellate powers as the appellate power can correct all manners of errors committed by the subordinate courts. The following judgments may be referred:

- (1) Shivdev Singh v. State of Punjab*
- (2) Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*
- (3) Meera Bhanja v. Nirmala Kumari Choudhury*
- (4) Uma Nath Pandey v. State of U.P.*

33. Recently, this Court in a judgment dated 24-2-2023 passed in S. Murali Sundaram v. Jothibai Kannan [S. Murali Sundaram v. Jothibai Kannan, (2023) 13 SCC 515 : 2023 SCC OnLine SC 185], observed that even though a judgment sought to be reviewed is erroneous, the same cannot be a ground to review in exercise of powers under Order 47 Rule 1CPC. Further, in Perry Kansagra v. Smriti Madan Kansagra [Perry Kansagra v. Smriti Madan Kansagra, (2019) 20 SCC 753] , this Court observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the review court does not sit in appeal over its own order.

34. In another case between Shanti Conductors (P) Ltd. v. Assam SEB [Shanti Conductors (P) Ltd. v. Assam SEB, (2020) 2 SCC 677 : (2020) 2 SCC (Civ) 788] , this Court observed that scope of review under Order 47 Rule 1 read with Section 114CPC is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue questions which have already been addressed and

decided. It was further observed that an error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record.

35. From the above, it is evident that a power to review cannot be exercised as an appellate power and has to be strictly confined to the scope and ambit of Order 47 Rule 1CPC. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions”.

13. Accordingly, as discussed and held as above, on legal principles this Court also does not find that there is any apparent error on the face of the record and accordingly, this review petition is dismissed.

(AVANINDRA KUMAR SINGH)
JUDGE

VKV /-