

Jeet Singh(Through LRs vs.Rajbir Singh (Through Lrs)

**IN THE COURT OF SH. JITEN MEHRA: DISTRICT JUDGE-10:
TIS HAZARI COURTS: DELHI.**

Misc. DJ NO.61301/2016

In the matter of:

JEET SINGH (THROUGH LRS)

.....Plaintiffs

Versus

RAJBIR SINGH (THROUGH LRS)

.....Defendants

**ORDER ON APPLICATION OF THE DEFENDANTS NO.1(a) – (c)
UNDER ORDER XLVII RULE 1 CPC R/W 151 CPC SEEKING
REVIEW OF THE ORDER DATED 19.09.2017.**

1. This Order shall dispose off an application under Order XLVII Rule 1 r/w Sec.151 CPC filed by the defendants no.1(a) to 1(c) against the order dated 19.09.2017 passed by the Ld. Predecessor of this Court, whereby, the defendants no.5 and 8 were allowed to be transposed as plaintiffs in the present suit.

2. In order to adjudicate this present application, it would be expedient to give a brief history of the present litigation.

3. The present suit is a family tussle between Late Sh. Jeet Singh (plaintiff) and the LRs of his brothers Late Sh. Ghasi (defendants no.1-4) and Late Sh. Jawahar Singh (defendants no.5-8) over the suit property, i.e. Plot no. 1572, measuring 1200 sq yards at Village Mangolpur Kalan. Delhi (hereinafter referred to as the suit property) which has been pending for more than 41 years despite a preliminary decree having been passed around 29 years ago.

4. The plaintiff Jeet Singh filed the present suit on 29.10.1982 seeking partition of the suit land claiming $\frac{1}{3}^{\text{rd}}$ share in the suit property along with the Lrs of his two brothers namely Late Sh. Ghasi (defendants no. 1-4) and Late Sh. Jawahar Singh (defendants no.5-8). The suit was opposed by the defendants no.1-4 on the ground that they were the exclusive owners of the suit property and the partition had already taken place. No written statement was filed by the

defendants no.5-8. The plaintiff Jeet Singh expired during the pendency of the suit and his legal heirs (LRs) were impleaded as Plaintiffs no.1 -5, vide order dated 18.04.1985.

5. A preliminary decree was passed in the present suit on 25.11.1994, the LRs of the deceased plaintiff (Jeet Singh) i.e. the Plaintiffs no.1-5, the defendants no.1- 4 (LRs of Late Sh. Ghasi) and the defendants no. 5- 8 (Lrs of Jawahar Singh) were held jointly entitled to 1/3rd share each in the suit property. The same is also provided in a tabular form below for further clarity:

Name of the parties	Share as per the preliminary decree dated 25.11.1994
LRs of the Plaintiff Jeet Singh P1. Padma Devi (widow) P2. Ramesh Kumar Shokeen (son) P3. Surjeet Singh (son) P4. Flt. Lt. Satish Shokeen (son) P5. Chander Kanta Sharma (daughter)	Jointly held entitled to 1/3rd share in the suit property (i.e. 400 sq. yards in total and 80 sq yards each)

Defendants no.1-4 (LRs of Late Sh. Ghasi) D1. Rajbir (son) D2. Jai Bhagwan (son) D3. Jai Kishan (son) D4. Ram Phal (son)	Jointly held entitled to 1/3rd share in the suit property
Defendants no. 5-8 (LRs of Late Sh. Jawahar Singh) D5.Charan Singh (son) D6.Baljeet Singh (son) D7. J.W.O Inder Singh Shokeen, (son) D8.Jagdish Singh (son)	Jointly held entitled to 1/3rd share in the suit property

6. The matter was also listed for final decree proceedings. However, the LR's of Sh. Rajbir Singh (defendant no.1) filed an appeal against the preliminary decree dated 25.11.1994 bearing RFA No.1/1995 titled as '*Sh. Rajbir Singh & Ors vs Smt. Padma Devi & Ors*' before the Hon'ble High Court of Delhi and the operation of the preliminary decree was also stayed. Ultimately, the said appeal was dismissed with costs vide judgment dated 03.12.2008.

7. However, in the meanwhile, the present case was consigned to the record room without taking any steps for passing of the final decree in the present matter, which, I may add was not the proper course to follow in the present matter as per the decisions of Hon'ble Supreme Court in ***Kattukandi Edathi Krishnan and another v. Kattukandi Edathil Valsan and others***, AIR 2022 SC 2841 and ***Shub Karan Bubna and others vs. Sita Saran Bubna and others***, (2009) 9 SCC 689 which mandate that after the passing of a preliminary decree in a suit for partition, the court must *suo motu* list the matter for final decree proceedings and not wait for an application from the parties for passing of a final decree. Further, a partition suit is fully disposed off only on the passing of a final decree and till such time, the suit remains pending.

8. After almost 15 years of the passing of the preliminary decree dated 15.11.1994, an application dated 27.5.2009 was filed by the LRs of the deceased plaintiff Jeet Singh, i.e. the Plaintiffs no.1-5 for appointment of a local commissioner and passing of the final decree

in the matter. On 03.03.2010, a local commissioner was appointed by the Court to suggest the modes of partition of the suit property. The local commissioner filed his report before the Court on 27.04.2010.

9. I shall not delve further into the details of the proceedings in the present suit except to state that a settlement was entered into between the parties, which has been disputed. No further progress has been made in the present case since then.

10. On 19.09.2019, this Court passed an order whereby the defendants no.5 and 8 were allowed to be transposed as plaintiffs, against which order the defendants no.1(a) –(c) have filed the present review application.

Review Application under Order 47 rule 1 CPC filed by the defendants no.1(a) – (c) against the order dated 19.9.2017

11. It is stated in the review application that the defendants no. 5 and 8 had already relinquished their shares for consideration rather sold the same to the defendants no.1(a) - (c) leaving them with no

right, title and interest in the suit property and could not have been transposed as the plaintiffs. The present matter was referred for mediation where the matter was settled and an application under Order 23 Rule 1 CPC r/w section 151 CPC was also filed. The said defendants are stated to have received the consideration and handed over the possession as well by executing necessary documents. It was stated that the applicants/defendants no.5 and 8 have been trying to stall the passing of the final decree in terms of the relinquishment of their shares against consideration. These facts have been overlooked by this Court while passing the order dated 19.09.2017. It was also stated that on 19.09.2017, the case was listed for adjudication of the application under Order 22 rule 4 CPC read with section 151 CPC for impleadment of LRs of the defendant no.3 and instead the application of the defendants no.5 – 8 seeking transposition as plaintiffs was allowed by the Court. It was also erroneously noted in the said order that other defendants have not filed any reply to the applications of the defendants no.5-8. It is also urged that the plaintiffs had not abandoned the suit and they had already made the necessary

statements before this Court. Hence, it is prayed that the order dated 19.09.2017 be recalled.

Reply on behalf of the newly transposed plaintiffs (the earlier defendants no. 5- 8) to the review application of the plaintiffs.

12. As per the newly transposed plaintiffs, there was no error apparent on the face of the record and the order dated 19.09.2017 did not cause any failure of justice and hence there were no grounds to seek review as per the decision of *Rejendra Kumar and Ors vs Rambhai & Ors*, AIR 2003 SC 2095. It also stated that as per the decision of *Avijit Tea and Co Pvt Ltd vs. M/s Terai Tea Co. & Ors*, in normal circumstances, an application for review of an order is not maintainable and the proper remedy is only to file an appeal or revision. It is submitted that in the present case, the defendants no.1(a) to (c) have not mentioned about any such circumstances.

13. In their reply on merits, defendants no.5 & 8 to the above-mentioned application stated that the applicants/defendants no.1(a) to

(c) have forged some documents and are alleging themselves as owner of the shares of the newly transposed plaintiffs/non-applicants and they have also sold their share in the property.

14. I have heard arguments adduced and have perused the record carefully.

Reasons and Decision

15. Order 47 rule 1 CPC provides for review of any order or judgment on the ground of (a) discovery of new and important matter or evidence, which could not be produced at the time of the passing of the order despite due diligence; or (b) on account of some mistake or error apparent on the face of the record; or (c) or for any other sufficient reason.

16. The Hon'ble Supreme Court has summarized the principles regarding grounds of review in *S. Murali Sundaram v Jothibai Kannan*

& Ors, bearing Civil Appeal no. 1167-1170 of 2023, decided on 24.2.2023, as follows:

*“5.1 While considering the aforesaid issue two decisions of this Court on Order 47 Rule 1 read with Section 114 CPC are required to be referred to? In the case of **Perry Kansagra** (supra) this Court has 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. It is observed that a rehearing of the matter is impermissible in law. It is further observed that review is not appeal in disguise. It is observed that 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 that it is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy has been finally decided. After considering catena of decisions on exercise of review powers and principles relating to exercise of review jurisdiction under Order 47 Rule 1 CPC this Court had summed up as under:*

“(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error 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 the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit.”

5.2 It is further observed in the said decision that an error which is required to be detected by a process of reasoning can hardly be said to be an error on the face of the record.

*5.3 In the case of **Shanti Conductors (P) Ltd.** (supra), it is observed and held that scope of review under Order 47 Rule 1 CPC read with Section 114 CPC is limited and under the guise of review, the petitioner cannot be permitted to re-agitate and re-argue questions which have already been addressed and decided. It is 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 justifying the court to exercise its power of review under Order 47 Rule 1 CPC.”*

[Emphasis supplied]

17. Hence, an error apparent on the face of the record must be one which is obvious and visible without indulging in any detailed examination of the record. At this stage it would be useful to refer to the contents of the order dated 19.9.2017, which is reproduced below:

* * *

M No. 31301/16
Jeet Singh Vs. Rajbir Singh

19.09.2017

Present: Proxy Counsel Sh. Jatin Bhatia for the defendant no. 2.
Sh. R.S. Verma, Ld. Counsel for the defendant no. 5.
Sh. Sanjay Kumar, Ld. Counsel for the defendant no. 7.
Sh. Narender Sharma, Ld. Counsel for the defendant
no. 8.

Reply to the application under Order 22 Rule 4 read with Section 151 CPC has been filed on behalf of the defendant no 8 for impleadment of LRs of deceased defendant no. 3 Sh. Jai Kishan.

Arguments heard on the application of the defendant no 5 to 8 seeking transposition themselves at the place of the plaintiff as none is appearing on behalf of the plaintiff. Other defendants have not file the reply to the application.

Other defendants submit that they have no objection if the defendant no. 5 and 8 have transposed themselves as plaintiff as none has appeared for the plaintiff despite substituted service by way of publication to the LRs of the deceased plaintiff Jeet Singh.

Since long the suit has not been represented by either of LRs of the plaintiff, defendant no. 5 and 8 sought themselves to be transposed as plaintiff in the present matter. It is a suit for partition and the preliminary decree has already been passed in the year 1994 and thereafter, Local Commissioner was also appointed to suggest the mode of partition. Report is already on record.

Considering the nature of matter and the fact that matter is more than 10 years old and it is settled law that in the partition suit, all the parties are plaintiff and defendant, the application is allowed in the interest of justice. Defendant no. 5

and 8 are directed to file amended memo of parties with advance copy of the other side.

Put up the matter for final decree on 25.09.2017

* * *

[Emphasis supplied]

18. The order dated 19.9.2017 incorrectly records that no reply has been filed by other defendants to the application of the defendants no. 5 and 8 seeking to be transposed as the plaintiffs, whereas a bare perusal of the record of the case reveals that the defendant no.5 and defendant no.8 filed separate applications dated 20.3.2014, under section 151 CPC, seeking to be transposed as a plaintiff in the present suit. A reply dated 8.5.2014 was filed by Paramjeet Singh and Rajesh Shokeen contesting the application of the defendant no.5. Another reply dated 8.5.2014 was also filed by Rajesh Shokeen and Sarvjeet Singh contesting the application of the defendant no.8. Hence, the order dated 19.9.2017 wrongly records that no reply had been filed by the other defendants, which is an error apparent on the face of the record. Further, the order has been passed without affording the

present applicants an opportunity of being heard or even considering their reply and deserves to be set aside.

19. Hence, in view of the aforementioned reasons, the order dated 19.09.2017 is recalled and set aside. Resultantly, the transposed plaintiffs are relegated to their position of defendants no.5 and 8 in the present suit. Amended memo of parties be filed by the review applicants.

20. The registry is also directed to re-categorize the present suit as a civil suit instead of a miscellaneous application. The Ahlmad is directed to do the needful in this regards.

21. List the matter on **06.07.2024** for further proceedings.

**Announced in the open court
on 13.05.2024**

**(JITEN MEHRA)
DJ-10/Central/THC
Delhi.**