



CNR NO.GANG010019042022

Presented on : 10.10.2022

Registered on : 11.10.2022

Decided on : 16.12.2022

Duration : Days Months Years
05 02 --

IN THE COURT OF DISTRICT JUDGE-1, FTC,
NORTH GOA, MAPUSA.

(Before: Smt. Sharmila Patil, Adhoc District Judge-1,
FTC, North Goa, Mapusa)

Civil Review Application No.4/2022

In

Regular Civil Appeal No.298/2010

1. Mrs. Reshma Ramesh Chatim
Haldankar age about 83 years,
r/o Badem, Salvodor do Mundo,
Bardez Goa.

... Applicant/Original
Respondent no.1(a)

Versus

1. Shri Madhukar Balkrishna Haldankar,
Chatim, r/o House No.B-135,
Betim Bardez Goa.

1(a) Madhumati Madhukar Chatim Haldankar (widow)

1(b) Sudesh Madhukar Chatim Haldankar (son)

1(c) Sushant Madhukar Chatim Haldankar (son)

1(d) Sukanti Umesh Lotlikar (married daughter)

1(e) Supriya Rajesh Tandel (married daughter)

1(f) Amita Anant Kerkar (married daughter)

All above r/o House No.B-135,

Betim, Bardez Goa.

...Respondent
Original Petitioner

2. Ramesh V. Chatim Haldankar (since deceased)
r/o Badem, Salvador-do-Mundo, Bardez Goa.

Smt. Radhabai Mangesh Lotlikar (expired)
widow sister of the defendant no.1,
Both r/o Badem, Salvador-do Mundo,
Bardez Goa.

3. Anandrao Venkatesh Chatim Haldankar
of full age, Goldsmith,
r/o Badem, Salvador do Mundo,
Bardez Goa (since deceased)

4. Smt. Saraswati Lotlikar, full age,
widow and housewife, r/o Badem,
Salvador do Mundo,
Bardez Goa (since deceased),

4a. Mangesh V. Lotlikar, major of age,

4b. Medha V. Lotlikar, major in age,
Both r/o Badem, Salvador do Mundo,
Bardez Goa.

5. Sachit Arjun Kavlekar,
age about 60 years,

r/o Maina Pilerne, Bardez Goa.

... original
Respondent

Applicant represented by Learned advocate Shri S. Rivankar alongwith Ld. Advocate R. Rivankar.

Respondents no.1(a) to 1(f) represented by Ld. Advocate Shri M. P. Mulgaonkar.

Respondents no.5 represented by Ld. Advocate Shri G. Nagvekar.

LRs of Respondent no.4 absent.

ORDER

**(Delivered on this the 16th day of the month of
December of the year, 2022)**

1. This is an application for review under Order 47 Rule 1 of CPC of Judgment and Decree dated 14.09.2022 passed by this Court in Regular Civil Appeal No.298/2010.

2. **Case of the applicant:-** That the respondent/original appellant had filed a Regular Civil Appeal being RCA No.298/2010, challenging the

Judgment and Decree dated 30.08.2002, passed by the Trial Court wherein the Ld. Civil Judge Senior Division, had dismissed the suit of the respondent herein for permanent injunction, damages and restoration of teak wood material.

3. That this Hon'ble Court was pleased to hear the appeal alongwith an application for production of additional documents filed by the respondent no.1 herein and by Judgment and Decree dated 14.09.2022, set aside the Judgment and Decree dated 30.08.2002 (hereinafter referred to as the said Judgment) passed by the Trial Court for production of additional documents and for deciding the suit afresh.

4. That upon perusing there is an error apparent on the face of the record to the extent that this Hon'ble Court while passing the said Judgment has concluded and has given findings on merits particularly in paragraphs 37,

38, 39 and 41, which will prejudice the mind of the Trial Court, while deciding the suit afresh upon recording additional evidence as directed by this Hon'ble Court.

5. That the findings given by this Hon'ble Court in aforesaid paragraphs ought to have been prima facie findings and not on merits affecting final determination by the Trial court while deciding the suit afresh. This being sufficient reason could be corrected in review under Order 47 Rule 1 of CPC.

6. In fact this Hon'ble Court while concluding on merits particularly in paragraphs 37, 38, 39 and 41, ought not to have concluded on merits, but ought to have clarified that it is a prima facie view in order to enable the Trial Court/Lower Court to apply its mind independently not affected by Superior view, which amounts to error apparent on the face of the record, which needs correction by way of clarification.

7. The findings given by this Hon'ble Court particularly in aforesaid paragraphs being Appellate Court are binding on the Trial Court/Lower Court and as such will cause great prejudice to the applicant's case on merits.

8. That in paragraph 46 of the said Judgment, this Hon'ble Court has concluded that in order to decide an appeal also the documents now ought to be produced on record and allowed to be produced, would have a bearing on the facts of the case and would require to decide the appeal, it was but natural for his Hon'ble Court while deciding the appeal not to conclude on merits in absence of those documents in order to give free play to the Trial Court to decide the suit afresh. This being a apparent error on the face of the record which necessitate correction by way of clarification that what is expressed particularly in paragraphs 37, 38, 39 and 41 of the said

Judgment is a prima facie view/finding, could be corrected in review, as it would not amount to change in view of the Court.

9. Further in paragraphs 1, of the said Judgment there is typographical error in typing date of Judgment as “30.08.2022” instead of “30.08.2022”, which is also required to be corrected being typing mistake.

10. Therefore, in the interest of justice, equity and fair play this Hon’ble Court be pleased to review the said Judgment as stated above and do justice to the applicant.

11. That the applicant has not filed any appeal or application against the said Judgment and Decree before the Higher Court.

12. **Case of the respondent nos. 1(a) to (f):-** That it is denied that there is an error apparent on record to the extent that this Court while passing the Judgment has

concluded and given findings on merits particularly in paragraphs 37, 38, 39 and 41 which will prejudice the mind of Trial Court while deciding the suit afresh upon recording additional evidence as directed by this Court.

13. The respondents deny that this Court while concluding on merits particularly in paragraphs 37, 38, 39 and 41 ought not to have concluded on merits, but ought to have clarified that it is prima facie view in order to enable the Trial Court to apply its mind independently not affected by superior view, which amounts to error apparent on face of record, which needs correction by way of clarification.

14. It is denied that findings given by this Court in the aforesaid paragraphs being of Appellate Court are binding on trial Court and will cause great prejudice to the applicant's case on merits. It is denied that in paras

37, 38, 39, 41 and 46 of the Judgment passed by this Court there is an error apparent on the face of record.

15. This Court has already issued corrigendum dated 19.09.2022 correcting the typographical error in typing date of Judgment.

16. Heard arguments. I have gone through the records and the proceedings, the Judgment under Review and have duly considered the arguments advanced by Ld. Advocate for the parties.

17. This Court vide its Judgment under review dated 14.09.2022 observed in para 48 that the remand of the Special Civil Suit No.71/98/C was required in view of the law settled by the Hon'ble Apex Court in **J. Balaji Singh Vs. Diwakar Cole and others [AIR 2017 SC 2402]** wherein it was observed that once the Appellate Court allowed the application under Order 41 Rule 27 of

the Code and took on record the additional evidence, rightly set aside the Judgment/decreed of the Trial Court giving liberty to the parties to lead additional evidence in support of their case which in turn enabled the Trial Court to decide the Civil Suit afresh on merits in the light of the entire Judgment. It further observed that the first Appellate Court was therefore, justified in taking recourse to the powers conferred on the Appellate Court under Order 41 Rule 23(A) for remanding the case to the Trial Court and that no fault can be found in the exercise of such power by the first Appellate Court. The Hon'ble Supreme Court also observed that once the first Appellate Court framed an opinion to remand the case it was required to give reasons in support of the remand order as to why the remand is called for in the case and there is no need to discuss the merits at this totally uncalled for.

18. Although this Court, in para 48 held so, while discussing the reasons for allowing the application for production of documents, this Court in para no.37, 38, 39 and 41 touched some facts on merits which were required to reason out for the grant of the application for production of additional evidence by the plaintiff. While doing so, the view expressed in paras 37, 38, 39 and 41 were to the extent for reasoning out the grant of the application for additional evidence and were certainly the prima facie view and finding.

19. The Ld. Advocate for the respondents 1(a) to 1(f) urged that there is no error apparent on the face of records and such clarification is not required to be inserted in the operative part of the Order. He has urged that the findings in these above mentioned paras will not create any prejudice to the applicant's case on merits and according to him this Court has followed Order 41 Rule

31 and therefore, there is no such error apparent on the face of record or a mistake that has been committed by this Court.

20. On the other hand, the Ld. Advocate for the applicant contended by placing reliance on **Board of Control for Cricket, India and another Vs. Netaji Cricket Club and others [(2005) 4 SCC 741]** that Order 47 Rule 1 of the Code provides for filing an application for review and such application would be maintainable not only upon discovery of a new and important piece of evidence or where there exists an error apparent on the face of record but also the same is necessitated on account of some mistake or for any other sufficient reason.

21. He also argued that a mistake on the part of the Court which would include a mistake in the nature of an undertaking may also call for review of the Order and an

application for review could also be maintainable if there exists sufficient reasons therefore, and what constitutes a sufficient reason would depend on the facts and circumstances of the case.

22. According to the Ld. Advocate for applicant placing reliance on the above cited decision the Hon'ble Apex Court has held that the words "sufficient reason" in Order 41 Rule 1 of the Code is vide enough to include a misconception of a fact or law by a Court or even an Advocate.

23. After going through the cited Judgment in my view, a mistake on the part of the Court would be within the frame work of an application for review and under Order 47 Rule 1 CPC provides for such a review if there are sufficient reasons.

24. In these circumstances, I do agree with the arguments of Ld. Advocate for the applicant that this Court in the operative part of the Order was required to clarify that the view expressed in these paras is a prima facie view/findings and shall not be binding on the Trial Court while deciding the suit afresh. This clarification was required in the operative Order in order to give a free play for the Ld. Trial Judge to decide the suit afresh on its own merits without being influenced by the view expressed by this Court in the above mentioned paras.

25. As I have discussed herein above the findings of this Court in para 37, 38, 39 and 41 were the prima facie view of this Court and findings thereof only to reason out the reasons for a remand of the said Civil Suit.

26. Thus, there is an error apparent on the face of record and in fact could be also a mistake on the part of this Court for not mentioning in the operative Order that

the view expressed in these paragraphs of the Judgment is a prima facie view/findings and shall not be binding on the Ld. Trial Judge while deciding the suit afresh and therefore, to that extent the review application needs to be granted.

27. As far as the typographical error in para 1 of the Judgment wherein the date of the impugned Judgment is referred to 30.08.2022 instead of 30.08.2002 already stands corrected by this Court vide corrigendum dated 19.09.2022 and hence, this prayer (b) of the application has become redundant.

28. In view of the above discussion, I pass the following:-

ORDER

The Civil Review Application is partly allowed in terms of prayer (a).

Consequently, the Judgment and Decree dated 14.09.2022 is maintained, however, the following shall be added in the operative part of the Judgment after the paragraph “parties shall appear before Ld. Trial Judge on 12.10.2022 at 2.30 p.m.”:-

“it is made clear that the findings in paragraph no.37, 38, 39 and 41 in the above said Judgment is a prima facie view/findings of this Court while granting the application for production of additional evidence and thus, the Ld. Trial Judge shall decide the said Civil Suit on its own merits, without being influenced by the observations made by this Court in the above paragraphs.”

Issue corrigendum to the Judgment and Decree in RCA No.298/2010 dated 14.09.2022.

Pronounced in the open Court.

(Sharmila A. Patil)
Adhoc District Judge-1,
FTC, North Goa,
M A P U S A.

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