

Order Below Exh. 63
(Passed on 12.01.2024)

This is an application filed by defendant under section 114 and Order XLVII Rule 1 of the Code of Civil Procedure 1908.

2. Through this application defendant submitted that this is the suit for declaration that the sale-deed dated 28.01.2021 is not binding upon plaintiff and relief of perpetual injunction in respect of suit property described in para 1 of plaint.

3. Defendant contended that the suit is not maintainable. The partition deed is not on record. This Court has not considered these facts and citations of Hon'ble High Court. Hence, there is mistake or error apparent on the face of record or for any other sufficient reason or after exercise of due diligence was not within his knowledge.

4. Defendant further contended that plaintiff did not take objection for mutation entry no.2344 since 31 years. Similarly, the partition of suit properties took place in the year 1990. The partition-deed is registered. Plaintiff did not institute the suit in the year 2013. He did not paid the proper Court fee stamp. These facts did not take into consideration while passing order. The said order is wrong. Hence there is need to review the said order.

5. Plaintiff at Exh. 66 submitted his say and opposed the said application. He contended that Exh.23 is decided on merits. Said application is rejected on 14.02.2022. The said order is right and proper. The defendant has no right to file this application. The reason regarding to review is not mentioned in this application. Defendant did not claim relief in concern Court. But, by filing such applications,

defendant delaying the matter. Hence, plaintiff prayed for reject the said application.

6. Following points arise for my determination. I have recorded my findings thereon for the reasons to be discussed hereinafter.

Sr. No.	Points		Findings
1	Whether defendant is entitled for review as prayed?	...	No.
2	What order?	...	As per final order.

REASONS

POINT NOS.1 and 2 :-

7. I heard advocates of both parties. Perused the record of the case. Perused documents submitted by plaintiff. Ld. Advocate of defendant submitted that this Court has right to review the order according to section 114 and order XLVII of Code of Civil Procedure 1908.

8. Ld. Advocate of plaintiff submitted that defendant did not mention the reason for review. It did not within four corners of review. Defendant has filed such type of application for delaying the matter.

9. I perused the record of the case. It is seen that, Exh.23 is decided on merits. Said application is rejected on 14.02.2022. The said order is right and proper.

10. It is taking into consideration the grounds of review – 1) Mistake apperantly on face of record, 2) new or additional evidence

came on record. It is seen that there is mistake on face of record of the order.

11. It is seen that while passing the rejection order, the contents of written statement could not be take into consideration. Hence, there is no need to review the said order. It is also seen that defendant had filed an application below Exh.58 for condoning delay of review application. There was delay of 110 days to file the application of review. After passing the order on Exh.58 dtd.21.11.2022, the Court has passed no argument order against defendant on 28.11.2023 at Exh.63. Considering the record, the application of defendant is vexatious. It delayed the proceedings of the Court. Hence, compensatory cost should be awarded.

12. Considering above discussion, I answer point no. 1 is in negative. For answer point no. 2, I pass following order:

ORDER

1. The application is rejected.
2. Defendant do pay compensatory cost of Rs. 1000/- to plaintiff.
3. Parties to proceed the matter expeditiously.

Date:12.01.2024

S. S. Kulkarni

Place: Wai

4th Jt. Civil Judge Jr. Dn. Wai.