

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Review Petition No.46 of 2017

Reserved on: 24.11.2025

Date of Decision: 26. 11.2025

Ishwar SinghPetitioner

Versus

Lal Singh & another ... Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the Petitioner : Mr. R.K. Bawa, Senior Advocate with Mr. Ajay Kumar, Advocate.

For the Respondent: Mr. Y.P. Sood, Advocate.

Sandeep Sharma, Judge(oral):

By way of present Review Petition filed under Section 114 read with Order 47 Rule 1-2 of the Code of Civil Procedure, prayer has been made on behalf of the review petitioner (**hereinafter referred to as the appellant/defendant**) to review and recall the judgment and decree dated 18.11.2016 passed by this Court in RSA No.99 of 2009, titled as **Ishwar Singh vs. Lal Singh and another**, whereby this Court upheld the judgment and decree passed by First Appellate Court.

2. Precisely, the facts of the case, as emerge from the pleadings as well as other material adduced on record by the

¹ Whether the reporters of the local papers may be allowed to see the judgment?

respective parties, are that the respondent/plaintiff filed suit in the Court of Civil Judge (Junior Division), Court No.5, Shimla HP, averring therein that plaintiff and defendant are co-sharers of land comprising Khewat No. 46, Khatauni Nos. 356 and 357, Khasra Nos. 444, 570 and 573, Kita 3 measuring 00-00-98 hectares situate at Mauza Sangti, Tehsil and District Shimla, HP. Plaintiff averred that share of plaintiff in suit land is $11/33$, which comes to 00.00.33 hectares and share of defendant No.1 is of $16/33$, which comes to 00.00.53 hectares. While stating that plaintiff and defendant No.1 also own land adjoining to suit land, plaintiff also claimed that he is owner of land in Khasra No. 441 (old Khasra No. 217/125/3), whereas defendant is owner in possession of land comprised in Khasra No. 442 (Old No. 217/124/2) and upon these lands, they both have constructed their houses. Plaintiff claimed that the suit land is joint between the parties, but yet defendant in order to use the best portion of suit land started changing its nature without the same being validly partitioned.

3. Aforesaid suit filed by the respondent/ plaintiff came to be resisted by the appellant/defendant, who in his written statement though admitted that land in dispute is recorded in joint ownership of defendant and plaintiff, but submitted that same is not jointly possessed by the parties to the suit and defendant is in exclusive possession of Khasra No. 573 measuring 00-00-24 hectares, out of

suit land, whereas he is in exclusive possession of Khasra Nos. 444 and 570, kita 2 measuring 0-00-74 hectares. He further claimed that his share comes to 16/33 which is equivalent 0-00-65 hectares and not 0-00-53 hectares. Learned trial Court vide judgment and decree dated 27.07.2007, decreed the suit of the plaintiff for grant of permanent propitiatory injunction restraining defendant from changing nature of land comprised in Khasra No. 573, but rejected the another prayer for relief of mandatory injunction restraining defendant from raising construction over another portion i.e. Khasra nos. 444 and 570.

4. Being aggrieved and dissatisfied with the judgment and decree passed by the learned trial Court, plaintiff filed an appeal under Section 96 CPC before Additional District judge, Shimla i.e. Civil Appeal No. 35-S/13 of 2007, which came to be allowed vide judgment and decree dated 10.12.2008. First Appellate Court, while allowing the appeal preferred by the plaintiff, restrained defendant No. 1 from making any further construction so as to cover any more land on Khasra Nos. 444 and 570, though he permitted defendant to raise upper storey on the part already covered by the defendant. In the aforesaid background, defendant approached this Court by way of Regular Second Appeal No.99 of 2009, which ultimately came to be dismissed vide judgment dated 18.11.2016.

5. Being aggrieved and dissatisfied with aforesaid judgment passed by this Court, appellant/defendant approached Hon'ble Apex Court by of SLP(C) No.10364 of 2017. In afore SLP, appellant/defendant contended that High Court has relied upon the jamabandi which has, in fact, been wrongly recorded and the error which has been committed in the said jamabandi is because of taking wrong measurement i.e. conversion of Biswas into Hectares. Taking note of aforesaid plea set up by the appellant/defendant, Hon'ble Apex Court ordered that it would be more appropriate if the petitioner first approaches the High Court by way of review petition. Hon'ble Apex Court further held that in case the review petition is dismissed, the petitioner shall be at liberty to challenge the order not only passed in the review petition but the impugned order also i.e. judgment passed in appeal. In the aforesaid background, appellant/ defendant has approached this Court in the instant proceedings.

6. Precisely, the ground as has been raised in the petition for reviewing and recalling the petition, is that on search/verification of the revenue records, it appears that there is some inherent defect in the respective share as per area recorded in the revenue record because of which there is error in calculating the total area of the parties. As per appellant/defendant basic area ought to have been suit land equivalent to 3 biswa (64 sq karam=120 sq. meters)

equivalent 0.01.20 hectares as such, there is an error apparent on the face of the record due to wrong measurement of suit land the judgment and decree dated 18.11.2016 passed by this Court is liable to be reviewed. It has been further stated in the review petition that measurement of suit land has not been properly done during the course of settlement operations and on account of wrong measurement/ calculation of the respective shares/area of the parties in respect of the suit land, an error has crept in the record, resulting into great prejudice to the appellant/defendant.

7. Mr. R.K. Bawa, learned Senior counsel representing the appellant/defendant, vehemently argued that First Appellate Court arrived at a wrong conclusion that share of the petitioner is 00.00.65 hectares and not 0.00.74 hectares as per the revenue record. He submitted that bare perusal of the sale deed and revenue record clearly reveals that appellant/defendant is having share to the extent of 0.00.74 hectares, but yet Appellate Court made calculation while considering the share of the appellant/defendant to be 0.00.65 hectares. He submitted that since portion and share of the land was exclusively possessed and owned by defendant and same has been recorded in the revenue record, which was never challenged by the respondent/plaintiff, appellant/defendant could not be enjoined from carrying out construction on his portion of land.

8. To the contrary, Mr. Y.P. Sood, learned counsel representing the respondent No.1/plaintiff, vehemently argued that present petition is not maintainable because no error apparent on the record as has been pointed out. He submitted that though there is no illegality or infirmity in the judgment passed by this Court, which is sought to be reviewed, but even if it is presumed that there is some inherent defect in the respective share as per area recorded in revenue record, no illegality can be said to have been committed by First Appellate Court as well as this Court, especially when there is no dispute that findings recorded by them are purely based on revenue record adduced on record by the respective parties. He submitted that bare perusal of Ex. DX and PW-1/A clearly reveals that suit land is recorded in joint ownership of the parties and parties to the suit are in possession of specific portion of the suit land. He further stated that no party can be allowed to raise construction over and above his share. While placing reliance on Ext. D-4 and PW-1/A, learned counsel for the respondent/plaintiff, vehemently argued that out of suit land, which is 0-00-98 hectares, admittedly, defendant's share comes to 0-00-65 hectares, that too after adding share of proforma defendant, but learned trial Court, while making calculation, committed material illegality /mistake, while concluding that share of defendant No. 1

comes to 0-00-74 hectares, which is apparently wrong, as has been held by first appellate Court.

9. Having heard learned counsel representing the parties and perused the material adduced on record at the behest of the appellant/defendant, this Court has no hesitation to conclude that grounds raised are nothing but reiteration of the grounds urged in the appeal. Though, there is nothing adduced on record to suggest that First Appellate Court as well as this Court wrongly interpreted the documents adduced on record by the respective parties to the *lis* suggestive of the fact that out of the suit land measuring 0-00-98 hectares, defendant's share comes to be 0-00-65 hectares, that too after adding share of proforma defendant. The judgment, sought to be reviewed, is based upon the revenue record adduced on record by the parties to the *lis*. Otherwise also, precisely the grouse of the petitioner as has been highlighted in the case at hand, is that there is some inherent defect in the respective share as per the area recorded in the revenue record because there is error in calculating the total area of the parties. It is the admitted case of the appellant/ defendant that measurement of the suit land has not been properly done during the course of settlement operation and on account of wrong measurement/calculation of the respective shares/area of the parties in respect of the suit land, an error has crept in the record. Till the

time corrections are not carried out in the revenue record, coupled with the fact that no such ground ever came to be raised at the behest of the appellant/defendant during the pendency of the trial and thereafter in the appeals, first before First Appellate Court and thereafter, this Court. First Appellate Court as well as this Court cannot be said to have committed illegality, while granting relief in terms of the revenue record adduced on record by the respective parties. Interestingly, no material, worth credence, has been adduced on record by the appellant/defendant in the instant proceedings to point out corrections, if any, made in the revenue record, especially with regard to measurement of the suit land. Ex. D-4 and PW-1/A clearly suggest that total area of the suit land is 0-00-98 hectares and therein appellant/defendant share is 0-00-65 hectares that too after adding share of proforma defendant. However, learned trial Court, while making calculation, which ultimately came to be rectified by First Appellate Court, committed material illegality /mistake, while concluding that share of defendant No. 1 comes to 0-00-74 hectares. This Court is fully convinced and satisfied that revenue record adduced on record by the respective parties was rightly interpreted and as such, there is no scope, if any, for reviewing /recalling the judgment.

10. The review jurisdiction is not meant to appreciate and re-appreciate the facts already considered and urged. The review petition cannot be equated with original hearing of the case and finality of the order sought to be reviewed cannot be questioned by opening the entire case. The submission made that the decision suffers from an error apparent on the face of the record cannot be accepted. The Hon'ble Supreme Court *in M/s.Thungabhadra Industries Ltd. vs. The Government of Andhra Pradesh, AIR 1964 SC 1372*, held:

“11.a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out....”

(P.1377)

11. Reliance is also placed upon recent judgment of Hon'ble Apex Court in case titled **Arun Dev Upadhyaya versus Integrated Sales Service Limited and another**, (2023) 8 Supreme Court Cases 11, wherein Hon'ble Apex Court elaborately discussed the scope of the phrase “error apparent on the face of record”. At this stage, it would be profitable to reproduce para Nos. 29 to 35 of aforesaid judgment herein below:-

29. A three-Judge Bench of this Court comprising of Hon'ble Shri S.R. Das, C.J., M. Hidayatullah and Shri K.C. Das Gupta, JJ. in *Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale* [*Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale*, 1959 SCC OnLine SC 10 : AIR 1960 SC 137] , discussed the scope of the phrase “error apparent on the face of record”. The challenge before this Court in the said case was the judgment [*Mallikarjun Bhavani Tirumale v. Satyanarayan Laxminarayan Hegde*, 1952 SCC OnLine Bom 82] of the High Court on the ground whether it suffers from an error apparent on the face of the record. The High Court had issued a writ of certiorari and had quashed order of the Tribunal and restored that of the Mamlatdar. In para 8 of the Report, the issue which was to be considered is reflected. The same is reproduced hereunder : (*Satyanarayan Laxminarayan Hegde case* [*Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale*, 1959 SCC OnLine SC 10 : AIR 1960 SC 137] , AIR p. 139, para 8)

“8. The main question that arises for our consideration in this appeal by special leave granted by this Court is whether there is any error apparent on the face of the record so as to enable the superior court to call for the records and quash the order by a writ of certiorari or whether the error, if any, was ‘a mere error not so apparent on the face of the record’, which can only be corrected by an appeal if an appeal lies at all.”

30. After discussing the relevant material on record, the conclusion is stated in para 17 of the report. The view was that where an error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. The view that long-drawn process of arguments to canvass a point attacking the order in a review jurisdiction, cannot be said to be an error apparent on the face of record. Relevant extract from para 17 of the Report is reproduced hereunder : (*Satyanarayan Laxminarayan Hegde case* [*Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale*, 1959 SCC OnLine SC 10 : AIR 1960 SC 137] , AIR pp. 141-42)

“17. ... Is the conclusion wrong and if so, is such error apparent on the face of the record? If it is clear that the error if any is not apparent on the face of the record, it is not necessary for us to decide whether the conclusion of the Bombay High Court on the question of notice is correct or not. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments. We do not

think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ. In our opinion the High Court was wrong in thinking that the alleged error in the judgment of the Bombay Revenue Tribunal viz. that an order for possession should not be made unless a previous notice had been given was an error apparent on the face of the record so as to be capable of being corrected by a writ of certiorari.

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* [*Shivdev Singh v. State of Punjab*, 1961 SCC OnLine SC 29 : AIR 1963 SC 1909]

(2) *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* [*Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, (1979) 4 SCC 389 : AIR 1979 SC 1047]

(3) *Meera Bhanja v. Nirmala Kumari Choudhury* [*Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170]

(4) *Uma Nath Pandey v. State of U.P.* [*Uma Nath Pandey v. State of U.P.*, (2009) 12 SCC 40 : (2010) 1 SCC (Cri) 501].

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 114CPC, 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.”

12. If the aforesaid judgment is read in its entirety, it clearly suggests that power to review can be exercised only upon existence of any of three conditions expressed in Order 47 Rule 1 CPC, which also includes “a mistake or an error apparent on the face of the record”. An error on the face of the record has been held to 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. This Court sees no material irregularity manifest in the order, undermining its correctness or resulting into miscarriage of justice. Needless to say that the review is not an appeal in disguise, entitling a party to be heard, simply because the party wants decision to be otherwise.

14. Consequently, in view of discussion made hereinabove and law taken into consideration, as well as principles laid down in the judgment rendered by Hon'ble Apex Court in ***Kamlesh Verma vs. Mayawati & Ors, (2013)8 SCC 320*** and ***Akhilesh Yadav Etc. vs. Vishwanath Chaturvedi, (2013)2 SCC 1***, the present petition is dismissed. Pending applications, if any, are also disposed of.

**(Sandeep Sharma),
Judge**

November 26, 2025
(shankar)