



IN THE HIGH COURT OF ORISSA AT CUTTACK

RVWPET No. 244 of 2022

(An Application under Section 114 read with Order XLVII Rule-1 of CPC)

Annapurna Dash & Others,

..... Petitioners

-Versus-

Sabitri Dash and Ors

.... Opposite Parties

Advocate(s) appeared in this case:-

<i>For Petitioner</i> :	Mr. D.R.Swain, Advocate for Defendant No.1- Petitioner
<i>For Opp. Party</i> :	Mr. S.K.Mishra, Learned Senior counsel with P.S.Mohanty, appearing for Plaintiff

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
12th December,2025

SASHIKANTA MISHRA, J.

This is an application filed under Order XLVII Rule 1 of CPC by the petitioner seeking review of the judgment dated 22.08.2022 passed by this Court in RSA No. 41 of 2004.



2. Review petitioner was the defendant No.1 in T.S. No.980 of 2000-1 before the Court of learned Additional Civil Judge, (Senior Division), Balasore and respondent No.1 in RFA No. 61 of 2009 of the Court of learned District Judge, Balasore. The suit was filed by one Gouranga Dash. Defendant No.1 had filed a counter claim in the said suit. The suit was dismissed but the counter claim was allowed. In first appeal preferred by the LR's of the original plaintiff, the suit was decreed and the counter claim was dismissed. Feeling aggrieved, defendant No.1 filed the above mentioned second appeal.

3. A brief reference to the facts would be necessary.

The case of the plaintiff is that he and defendant No.1 are the sons of Rudra Charan Das. After death of their father, they succeeded to his property along with their mother. Most of the properties were jointly recorded in the major settlement operation in their names. Even though some of the properties were recorded in the name of their mother, the original plaintiff and defendant No.1 possessed the same in equal shares by amicable partition. Some of the properties were also sold by them. The plaintiff filed the suit for partition of the scheduled properties. The defendant No.1 took the plea



that Gouranga (original plaintiff) is not the son of Rudra Charan and therefore, has no right over the property. He also advanced a counter claim that the scheduled properties exclusively belong to him. The trial Court held that the plaintiff could not establish that he was the son of Rudra and Chanchala. The suit was thus dismissed but the counter claim was decreed.

4. The plaintiff preferred first appeal. Upon reappreciation of the evidence on record, the first appellate Court found that there was enough evidence to show that Gouranga was the son of Rudra Charan. The findings of trial Court were thus interfered with by setting aside the dismissal of the suit and the counter claim was dismissed.

5. Defendant No.1 carried second appeal, which was admitted on the following substantial question of law:

“Whether the finding of the First Appellate Court that Gouranga is the son of Rudra Charan Das is not only based on the erroneous appreciation of evidence on record but also contrary to the settled law especially when, the First Appellate Court, instead of placing the burden of proof upon the Plaintiff to establish he said fact that Gouranga is the son of Rudra Charan Das has taken the view that the burden of proof lies upon the defendants to disprove the said fact in going to held at the end that it has not been discharged by the Defendants?”

This Court, after perusing the judgments passed by the Courts below, the pleadings and the documents admitted in



evidence found that there was overwhelming evidence that Gouranga was the son of Rudra Charan and has been accepted as such in several sale transactions. The judgment of the first appellate Court was thus, confirmed and the second appeal was dismissed.

6. Present application for review has been filed by defendant No.1 on the ground that the finding of the first appellate Court as well as this Court in second appeal is erroneous being contrary to record.

7. Heard Mr. D.R.Swain, learned counsel for the defendant No.1-petitioner and Mr. S.K.Mishra, learned Senior counsel with Ms. P.S.Mohanty, for the plaintiffs.

8. Mr. Swain would argue that the first appellate Court placed undue emphasis on the settlement records ignoring the fact that the same were prepared at the instance of the plaintiff, who was a major at that time while defendant No.1 was a minor and their mother was a *pardanasin* lady. Several other properties were also not brought into the hotchpot. Thus, in the absence of proper pleadings by the plaintiff, the suit for partition could not have been decreed. Since this Court did not consider the vital aspect though available on



record, the same amounts to an error apparent on the face of the record.

9. Per contra, Mr. S.K.Mishra, learned Senior counsel would argue that an appeal cannot be filed in the garb of review. In the instant case, the review petitioner essentially seeks to challenge the findings of the first appellate Court which were confirmed by this Court in second appeal. If aggrieved, he may challenge the same before the proper forum but he cannot be permitted to do so by filing a review.

10. The circumstances under which a judgment passed by a Court can be reviewed is well settled. Order XLVII Rule 1 of CPC reads as follows:

1. Application for review of judgment.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may



apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

[Explanation.—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment].

11. It is evident that the scope of review is limited to correct errors apparent on the face of the record, or if any new matter or evidence which could not be discovered or produced at the initial stage despite exercise of due diligence, has been discovered or for any other sufficient reason. In short, review would be permitted, if the order under review would lead to miscarriage of justice.

12. A review cannot however, be sought for on grounds that may be taken in an appeal. In the case of **M/s. Thungabhadra Industries Limited vrs. The Government of Andhra Pradesh** reported in AIR 1964 SC 1372, the Supreme Court observed as follows:

“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."

From the proposition of law as referred, it would be apparent that if a case has been decided after full consideration of arguments made on behalf of a party, the party cannot be permitted to ask for deciding the controversy already decided. If he is aggrieved by the judgment, he may approach the higher forum.

13. Viewed in light of the above propositions of law, this Court finds that no case whatsoever is made out to review the judgment passed by this Court in the second appeal. As argued by learned senior counsel appearing for the Opposite Party, the review petitioner has found more fault in the judgment of the first appellate Court than any error apparent on the face of the judgment passed by this Court. Viewed objectively, it would be evident that his case is that the mistake committed by the first appellate Court ought to have been rectified by this Court in the second appeal. It is seen that this Court while deciding the second appeal has based its finding entirely on documentary evidence available on



record such as Exhibits B, D, H and J. It has not been demonstrated as to how the conclusions drawn basing on such documents are erroneous or such that no prudent person would draw. It is open to the petitioner, if so advised, to challenge the findings of this Court before the higher forum but the case cannot be reopened for examination of the documentary evidence afresh in light of the arguments now being advanced by him. This Court is therefore, not persuaded to accept the contention advanced by the review petitioner.

14. For the foregoing reasons therefore, this Court finds no merit in the review application, which is therefore, dismissed.

.....
Sashikanta Mishra
Judge

Deepak