

HIGH COURT OF ANDHRA PRADESH

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Review I. A. No. 1 of 2022 in A. S. No. 59 of 2020

Between:

Palla Chenchu Harikala

.....REVIEW PETITIONER

AND

Bysani Satish and others

.....RESPONDENTS

DATE OF JUDGMENT RESERVED : **20.08.2025**
DATE OF JUDGMENT PRONOUNCED: **28.11.2025**
DATE OF JUDGMENT UPLOADED : **28.11.2025**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BL SRI JUSTICE MAHESWARA RAO KUNCHEAM

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

MAHESWARA RAO KUNCHEAM, J

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! Counsel for the Petitioner : Sri M. R. K. Chakravarthy

Counsel for the Respondents : Sri C. Subodh

< Gist :

> Head Note:

? Cases Referred:

- 1) (2016) 13 SCC 124
- 2) AIR 2011 SC 1492
- 3) AIR 2021 SC 4652
- 4) AIR Online 2020 SC 185
- 5) (2025) 4 SCC 509
- 6) 2024 SCC OnLine All 8932
- 7) (2017) 2 SCC 415
- 8) (2024) 2 SCC 362
- 9) (2013) 8 SCC 320
- 10) (2024) 7 SCC 315
- 11) (1954) 2 SCC 881
- 12) (1954) 2 SCC 42
- 13) 2024 SCC OnLine AP 3846
- 14) (2005) 13 SCC 289
- 15) 1993 Supp (4) SCC 595

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BL SRI JUSTICE MAHESWARA RAO KUNCHEAM**

Review I. A. No. 1 of 2022 in A. S. No. 59 of 2020

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri M. R. K. Chakravarthy, learned counsel appearing for the review petitioner and Sri C. Subodh, learned counsel appearing for respondent Nos.1 to 4.

2. The review petitioner is the appellant in A.S.No.59 of 2020.

3. The appeal was filed challenging the Order and Decree dated 09.12.2019 in E.A.No.32 of 2017 in E.P.No.50 of 2013 in O.S.No.98 of 2010, passed by the learned I Additional District and Sessions Judge, Nellore. The E.A.No.32 of 2017 filed by the appellant under Order 21 Rule 58 of Code of Civil Procedure (in short 'CPC') was rejected by the Executing Court.

4. The appeal A.S.No.59 of 2020 was dismissed by a Coordinate Bench of this Court on 05.01.2022, against which the aforesaid review application has been filed.

I. Facts:

5. O.S.No.98 of 2010 was filed by the respondent Nos.1 to 4 against one Pallala Bujjamma and respondents 5 and 6 for realization of the suit amount by redemption of mortgage. Preliminary decree dated 13.11.2011 was passed and the final decree was passed on 05.08.2013. The defendant/judgment debtors failed to comply with the decree, so the

plaintiffs/respondents 1 to 4/decree holders filed E.P.No.50 of 2013 to sell the suit schedule property and to realize the E.P. amount. In the said E.P, the review petitioner filed E.A.No.32 of 2017 under Order 21 Rule 58 read with Section 151 CPC.

6. The E.A was filed *inter alia* on the ground that the claim petitioner (review petitioner) is the daughter of late Arjunaiah @ Chenchiah who died on 15.12.2000, and the first judgment debtor Bujjamma and the sister of the respondents 2 and 3 (i.e., the sister of present respondents 5 and 6). The first judgment debtor Bujjamma died during pendency of E.P.No.50 of 2013. During the lifetime, the father of the review petitioner, Pallala Arjunaiah @ Chenchiah, had purchased certain landed properties including the E.P.schedule property and died intestate on 15.12.2000 leaving behind him his wife, the first judgment debtor and his daughters, the review petitioner and the 3rd judgment debtor and his son 2nd judgment debtor (present respondents 6 and 5 respectively). The case of the claim petitioner/review petitioner was that on the death of the father, by way of succession, the review petitioner and judgment debtors 1 to 3 became the absolute owners of the estate of the deceased. So, she had 1/4th share in the properties left by the deceased including the E.P. schedule property. She had filed O.S.No.199 of 2009 for partition, declaration and delivery of possession of her undivided share in the joint family properties. The E.P. schedule property was shown as item No.2 in the plaint schedule in O.S.No.199 of 2009, pending in the Court of the I Additional Senior Civil Judge, Nellore against the judgment debtors. The

further case of the claim petitioner/review petitioner was that the judgment debtors 1 to 3 without her consent and knowledge, defeating her claim, mortgaged the E.P schedule property to the plaintiffs (decree holders). The judgment debtors had no right to mortgage the E.P schedule property nor the decree holders have right to sell the E.P. schedule property in public auction without dividing the share of the claim petitioner/review petitioner pending disposal of the suit for partition etc., (O.S.No.199 of 2009). It was her further case that O.S.No.199 of 2009 was decreed on 25.01.2018 by allotting the item Nos.2 and 3 of the said suit schedule to the claim petitioner and item No.1 was allotted to the share of the judgment debtors 1 to 3. Those defendants were directed to handover the possession of item Nos.2 and 3 to the claim petitioner/review petitioner. Against the decree dated 25.01.2018, A.S.No.56 of 2018 was filed by the claim petitioner/review petitioner and was pending consideration before the Court of the V Additional District Judge, Nellore. Her case was that she was entitled for equal share in E.P. schedule property under the provisions of Hindu Succession Act 1956, and without partition and separate possession of E.P. schedule property, the execution was not maintainable, and requested to dismiss the E.P.No.50 of 2013.

7. The plaintiffs/decree holders/respondents 1 to 4 contested the application by filing the counter. Their case *inter alia* was that the documents filed by the claim petitioner were no way concerned with her claim and based on those documents, it could not be proved that the claim petitioner was legal heir or family member of the judgment debtors. Their further case was that

the claim petitioner (review petitioner) daughter of Pallala Arjunaiah @ Chenchiah was given in adoption, and so, she had no share in the mortgaged property and so no claim as legal heir of said Pallala Arjunaiah @ Chenchiah and not entitled to file claim under Order 21 Rule 58 CPC.

8. The learned Executing Court framed the following points for consideration:

1. “Whether the petition under Order 21, Rule 58 r/w Section 151 C.P.C is maintainable?
2. Whether the claim petitioner is entitled for 1/4th share in the E.P schedule property which is also subject matter in partition suit vide O.S.No.199 of 2009 pending on the file of I Additional Senior Civil Judge’s Court, Nellore and hence the E.P is not maintainable?”

9. The learned Executing Court on consideration made on points 1 and 2 dismissed the petition filed under Order 21 Rule 58 CPC as not maintainable.

A.S.No.59 of 2020:

10. The A.S.No.59 of 2020 filed by the appellant/review petitioner was dismissed by the Coordinate Bench, vide judgment and decree dated 05.01.2022.

11. The Coordinate Bench observed that the main question was with regard to the maintainability of the E.A.No.32 of 2017 under Order 21 Rule 58 CPC. The Coordinate Bench took a view that Order 21 Rule 58 CPC deals with adjudication of claims or objections with regard to the properties attached either directly or indirectly between the parties to the proceedings and this having not been done in the execution case, but the objection being to the

execution proceedings for bringing the mortgage property for sale, there was no merit in the appeal.

Review I.A.No.1 of 2022:

12. The Appellant has filed the Review Petition I.A.No.1 of 2022 in A.S.No.59 of 2020 to review the judgment dated 05.01.2022.

II. Submissions:

i). Of the learned counsel for the Review Petitioner:

13. Learned counsel for the review petitioner raised the following submissions:

- (1) That I.A.No. 1 of 2021 in the appeal which was filed for vacation of the interim order was heard, but the appeal has been decided finally.
- (2) In the appeal, points for determination were not framed. So, there was violation of the statutory provisions of Order 41 Rule 31 CPC. On mere perusal of the Order impugned in the appeal, the appeal was dismissed.
- (3) the submission advanced in the appeal before the Coordinate Bench was specifically that, the Executing Court acted illegally in observing that since the appellant did not make the plaintiff in O.S.No.98 of 2010 as party in O.S.No.199 of 2009 and did not challenge the mortgage deed, and therefore, the application under Order 21 Rule 58 CPC was not maintainable, but the said submission was not considered.
- (4) The further submission was advanced that since the mortgage was during the pendency of O.S.No.199 of 2009, such transaction shall abide by the doctrine of *lis pendens*, so there was no necessity to implead the plaintiff

of O.S.No.98 of 2010 in O.S.No.199 of 2009, which O.S.No.98 of 2010 was instituted subsequent to O.S.No.199 of 2009 or to challenge the decree passed in O.S.No.98 of 2010 or to challenge the mortgage deed, and in view of the decree passed in the suit for partition, the petition under Order 21 Rule 58 CPC could not be held to be not maintainable. But the said argument, though recorded in the judgment under review, was not considered and dealt with.

(5) The application under Order 21 Rule 58 CPC was maintainable. The review petitioner was claiming independent right in the E.P. schedule property and could maintain the claim petition and if it was not so under rule 58, it was maintainable under Rule 101 of Order 21 CPC and so, mere mention of wrong provision of law would not disentitle the review petitioner to maintain the claim petition, which could not be dismissed as not maintainable.

14. So, the submission of the learned counsel for the review petitioner is that, for the aforesaid reasons, the judgment suffers from apparent error of law and calls for interference in the exercise of review jurisdiction.

15. Learned counsel for the review petitioner placed reliance in the cases of (1) ***Union of India v. K. V. Lakshman***¹, (2) ***H. Siddiqui (dead) by LRs v. A. Ramalingam***², (3) ***K. Karuppuraj v. M. Ganesan***³, and (4)

¹ (2016) 13 SCC 124

² AIR 2011 SC 1492

³ AIR 2021 SC 4652

Malluru Mallappa (D) Thr.Lrs. v. Karuvathappa⁴ in support of his contention that it is mandatory for the appellate Court in view of the Order 41 Rule 31 CPC to frame the points for determination in the appeal and if that has not been done, then the appellate order cannot be sustained.

16. Learned counsel for the review petitioner placed further reliance in ***Commissioner of Customs v. M/s. Canon India Pvt. Ltd.***⁵ to contend that in passing the appellate judgment the statutory provisions of Order 41 Rule 31 CPC have been ignored. Such judgment is open for review.

ii). Of the learned counsel for the Respondents:

17. Learned counsel for the respondents submitted that from reading of the judgment, it is evident that the Court considered the moot question and it was also so observed, in the judgment. He submitted that non-framing the points for determination in terms of Order 41 Rule 31 CPC cannot be a ground for review. He further submitted that the appeal was heard on merits and not merely on the application for vacation of the interim order. He further submitted that there is no illegality in the appellate judgment which does not suffer from any apparent error of law and it is not open for interference in the exercise of review jurisdiction. The submissions and the grounds of challenge to the order passed by the Execution Court which were raised and agitated in appeal before the Coordinate Bench and also referred to in the judgment, even if those were not addressed and not decided, the same would not furnish a ground for review.

⁴ AIR Online 2020 SC 185

⁵ (2025) 4 SCC 509

18. Learned counsel for the respondents further submitted that the appellate Court agreeing with the finding of the learned trial Court/Execution Court need not record its reasons or even to deal with the arguments advanced to challenge the order of the Execution Court. He therefore submitted that the review deserved to be dismissed.

19. Learned counsel for the respondents placed reliance on ***Bhagirathi v. Indradev⁶*** and ***Laliteshwar Prasad Singh v. S.P.Srivastava (D)⁷***.

20. We have considered the aforesaid submissions and perused the material on record.

III. Point for determination:

21. The following point arises for consideration and determination by this Court:

“Whether the appellate judgment suffers from any apparent error of law or from other sufficient reason so as to call for interference in the exercise of review jurisdiction?”

IV. Analysis:

Scope of Review:

22. On the aspect of the review jurisdiction, the law has been settled in catena of judgments that the judgment is open to review, if there is a mistake or an error apparent on the face of the record or on the ground of discovery of a new and important matter of evidence, which after the exercise of due diligence was not within the knowledge of the review applicant or could not be

⁶ 2024 SCC OnLine All 8932

⁷ (2017) 2 SCC 415

produced by him at the time when the decree was passed or order made and also on any other sufficient reason, analogues to the grounds stated in Section 114 CPC read with Order 47 Rule 1 CPC. It has been reiterated time and again that a review would not be available if the error or mistake is not apparent on the face of the record and also that an erroneous decision cannot be re-heard and corrected in the exercise of the review jurisdiction, which is for limited purpose and cannot be converted into an appeal in disguise. The questions already raised and addressed and decided can also not be permitted to be re-agitated and re-argued. The review is to correct the apparent error in the decision, but not an erroneous decision.

23. However, before proceeding further, to consider if the judgment under review suffers or not on any of the legally permissible grounds for review, some legal precedents on the scope of review deserves to be looked into and kept in view.

24. In ***Sanjay Kumar Agarwal v. State Tax Officer***⁸ on considering various pronouncements on the subject, the Hon'ble Apex Court summarized the gist on the scope of review, in paragraph-16 as under:

“16. The gist of the aforestated decisions is that:

16.1. A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

16.2. A judgment pronounced by the court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

⁸ (2024) 2 SCC 362

16.3. 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.

16.4. In exercise of the jurisdiction under Order 47 Rule 1CPC, it is not permissible for an erroneous decision to be “reheard and corrected”.

16.5. A review petition has a limited purpose and cannot be allowed to be “an appeal in disguise”.

16.6. Under the guise of review, the petitioner cannot be permitted to reargue and reargue the questions which have already been addressed and decided.

16.7. 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.

16.8. Even the change in law or subsequent decision/judgment of a coordinate or larger Bench by itself cannot be regarded as a ground for review”

25. In ***Kamlesh Verma v. Mayawati***⁹ after discussing various decisions on the scope of review jurisdiction, the Hon’ble Apex Court summarized the principles for exercise of the review jurisdiction, also laying down when the review would be maintainable and when not. Paragraph-20 of ***Kamlesh Verma*** (supra) is as under:

“Summary of the principles

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

⁹ (2013) 8 SCC 320

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in *Chhajju Ram v. Neki* [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius* [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd.* [(2013) 8 SCC 337 : JT (2013) 8 SC 275]

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

26. Recently, in ***State (NCT of Delhi) v. K. L. Rath Steels Ltd.***¹⁰ the Larger Bench of the Hon'ble Apex Court on a reference made, elaborately laid down the law on the review jurisdiction. It is apt to reproduce Paragraphs 42 to 45, 56, 57 and 59 to 66 as under:

“42. Order 47 does not end with the circumstances as Section 114CPC, the substantive provision, does. Review power under Section 114 read with Order 47CPC is available to be exercised, subject to fulfilment of the above conditions, on setting up by the review petitioner any of the following grounds:

- (i) discovery of new and important matter or evidence; or
- (ii) mistake or error apparent on the face of the record; or
- (iii) any other sufficient reason.

43. Insofar as (i) (supra) is concerned, the review petitioner has to show that such evidence (a) was actually available on the date the court made the order/decreed, (b) with reasonable care and diligence, it could not be brought by him before the court at the time of the order/decreed, (c) it was relevant and material for a decision, and (d) by reason of its absence, a miscarriage of justice has been caused in the sense that had it been produced and considered by the court, the ultimate decision would have been otherwise.

44. Regarding (ii) (supra), the review petitioner has to satisfy the court that the mistake or error committed by it is self-evident and such mistake or error can be pointed out without any long-drawn process of reasoning; and, if such mistake or error is not corrected and is permitted to stand, the same will lead to a failure of justice. There cannot be a fit-in-all definition of “mistake or error apparent on the face of the record” and it has been considered prudent by the courts to determine whether any mistake or error does exist considering the facts of each individual case coming before it.

45. With regard to (iii) (supra), we can do no better than refer to the traditional view in *Chhajju Ram* [*Chhajju Ram v. Neki*, 1922 SCC OnLine PC 11 : AIR 1922 PC 112] , a decision of a Bench of seven Law Lords of the

¹⁰ (2024) 7 SCC 315

Judicial Committee of the Privy Council. It was held there that the words “any other sufficient reason” means “a reason sufficient on grounds at least analogous to those specified immediately previously”, meaning thereby (i) and (ii) (supra). Notably, *Chhajju Ram* [*Chhajju Ram v. Neki*, 1922 SCC OnLine PC 11 : AIR 1922 PC 112] has been consistently followed by this Court in a number of decisions starting with *Moran Mar Basselios Catholicos v. Mar Poulose Athanasius* [*Moran Mar Basselios Catholicos v. Mar Poulose Athanasius*, (1954) 2 SCC 42 : AIR 1954 SC 526] .

56. After considering a host of decisions with a fine-tooth comb, the Court went on to cull out the principles of review in para 35 of the decision which is extracted hereunder : (*Kamal Sengupta case* [*State of W.B. v. Kamal Sengupta*, (2008) 8 SCC 612 : (2008) 2 SCC (L&S) 735] , SCC pp. 637-38)

“35. The principles which can be culled out from the abovenoted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) *The expression “any other sufficient reason” appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.*

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) *A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.*

(vii) *While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of*

initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.”

(emphasis supplied)

57. This Court in *Subramanian Swamy v. State of T.N.* [*Subramanian Swamy v. State of T.N.*, (2014) 5 SCC 75 : (2014) 3 SCC (Civ) 134] , has read the Explanation as follows : (SCC pp. 96-97, para 52)

“52. ... The Explanation to Order 47 Rule 1 of the Code of Civil Procedure, 1908 provides ... that if the decision on a question of law on which the judgment of the court is based, is reversed or modified by the subsequent decision of a superior court in any other case, it shall not be a ground for the review of such judgment. Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, *finality attached to the judgment/order cannot be disturbed.*”

(emphasis in original)

J. Other precedents on review

59. Precedents on the aspect of review are legion and we do not wish to burden this judgment by tracing all the decisions. However, only a few that were considered in the split verdict, some which were cited by the parties before us and some that have emerged on our research on the subject and considered relevant, are discussed/referred to here.

60. Two of these decisions viz. *A.C. Estates v. Serajuddin & Co.* [*A.C. Estates v. Serajuddin & Co.*, 1965 SCC OnLine SC 295 : (1966) 1 SCR 235 : AIR 1966 SC 935] and *Shatrunji v. Mohd. Azmat Azim Khan* [*Shatrunji v. Mohd. Azmat Azim Khan*, (1971) 2 SCC 200] were

rendered prior to introduction of the Explanation in Rule 1 of Order 47CPC. Significantly, even without the Explanation, substantially the same view was expressed.

61. In *A.C. Estates* [*A.C. Estates v. Serajuddin & Co.*, 1965 SCC OnLine SC 295 : (1966) 1 SCR 235 : AIR 1966 SC 935] , a Bench of three Hon'ble Judges of this Court, while dismissing the civil appeal and upholding the order of the High Court of Calcutta, held as follows : (SCC OnLine SC para 16)

“16. ... Our attention in this connection is drawn to Section 29(5) of the Act which gives power to the Controller to review his orders and the conditions laid down under Order 47 of the Code of Civil Procedure. But this cannot be a case of review *on the ground of discovery of new and important matter, for such matter has to be something which exists at the date of the order and there can be no review of an order which was right when made on the ground of the happening of some subsequent event* (see *Kotagiri Venkata Subbamma Rao v. Vellanki Venkatrama Rao* [*Kotagiri Venkata Subbamma Rao v. Vellanki Venkatrama Rao*, 1900 SCC OnLine PC 12 : (1899-1900) 27 IA 197]).”

(emphasis supplied)

62. The next is the decision of a Bench of two Hon'ble Judges of this Court in *Shatrunji* [*Shatrunji v. Mohd. Azmat Azim Khan*, (1971) 2 SCC 200] . While dismissing an appeal and upholding the order [*Mohd. Azamat Azim Khan v. Shatrunji*, 1963 SCC OnLine All 50] of the Allahabad High Court, reference was made to “any other sufficient reason” in Rule 1 of Order 47CPC and the decision in *Kotagiri Venkata Subbamma Rao* [*Kotagiri Venkata Subbamma Rao v. Vellanki Venkatrama Rao*, 1900 SCC OnLine PC 12 : (1899-1900) 27 IA 197] whereupon it was held : (*Shatrunji case* [*Shatrunji v. Mohd. Azmat Azim Khan*, (1971) 2 SCC 200] , SCC pp. 203-204, para 13)

“13. ... the principles of review are defined by the Code and the words “any other sufficient reason” in Order 47 of the Code would mean a reason sufficient on grounds analogous to those specified immediately previously in that order. The grounds for review are the discovery of new matters 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 the review is asked for on account of some mistake or error apparent on the face of the record. In *Kotagiri Venkata Subbamma Rao v. Vellanki Venkatrama Rao* [*Kotagiri Venkata Subbamma Rao v. Vellanki Venkatrama Rao*, 1900 SCC OnLine PC 12 : (1899-1900) 27 IA 197] Lord Davey at IA p. 205 of the Report said that ‘*the section does not authorise the review of a decree which was right when it was made on the ground of the happening of some subsequent event*’.”

(emphasis supplied)

63. What was laid down in *Netaji Cricket Club* [*BCCI v. Netaji Cricket Club*, (2005) 4 SCC 741] , upon reading Order 47CPC, can be better understood in the words of the Hon'ble Judge authoring the judgment. The relevant passages are quoted hereunder : (SCC pp. 764-65, paras 88-90)

“88. ... Section 114 of the Code empowers a court to review its order if the conditions precedent laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words “sufficient reason” in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine “*actus curiae neminem gravabit*”.”

In the next paragraph, their Lordships quoted a portion of para 35 from the larger Bench decision in *Moran Mar Basselios Catholicos* [*Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius*, (1954) 2 SCC 42 : AIR 1954 SC 526] but held that “the said rule is not universal”.

64. *Netaji Cricket Club* [BCCI v. *Netaji Cricket Club*, (2005) 4 SCC 741] was followed in *Jagmohan Singh v. State of Punjab* [*Jagmohan Singh v. State of Punjab*, (2008) 7 SCC 38] . It was held there that Rule 1 of Order 47CPC does not preclude the High Court or a court to take into consideration any subsequent event and that if imparting of justice in a given situation is the goal of the judiciary, the court may take into consideration (of course on rare occasions) the subsequent events.

65. This Court, in para 20 of the decision in *Kamlesh Verma v. Mayawati* [*Kamlesh Verma v. Mayawati*, (2013) 8 SCC 320 : (2013) 3 SCC (Civ) 782 : (2013) 4 SCC (Cri) 265 : (2014) 1 SCC (L&S) 96] , after surveying previous authorities and following *Chhajju Ram* [*Chhajju Ram v. Neki*, 1922 SCC OnLine PC 11 : AIR 1922 PC 112] and *Moran Mar Basselios Catholicos* [*Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius*, (1954) 2 SCC 42 : AIR 1954 SC 526] summarised the principles of review and illustrated when a review would be and would not be maintainable. Despite the observation in *Netaji Cricket Club* [BCCI v. *Netaji Cricket Club*, (2005) 4 SCC 741] limiting *Moran Mar Basselios Catholicos* [*Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius*, (1954) 2 SCC 42 : AIR 1954 SC 526] , *Kamlesh Verma* [*State (NCT of Delhi) v. Kartar Singh*, 2016 SCC OnLine SC 1525] thought it fit to agree with the latter decision.

66. Recently, in *S. Madhusudhan Reddy v. V. Narayana Reddy* [*S. Madhusudhan Reddy v. V. Narayana Reddy*, (2022) 17 SCC 255 : 2022 SCC OnLine SC 1034] , a Bench of three Hon'ble Judges has accepted the meaning of the ground “for any other sufficient reason” as explained in *Chhajju Ram* [*Chhajju Ram v. Neki*, 1922 SCC OnLine PC 11 : AIR 1922 PC 112] , *Moran Mar Basselios Catholicos* [*Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius*, (1954) 2 SCC 42 : AIR 1954 SC 526]

and *Kamlesh Verma [State (NCT of Delhi) v. Kartar Singh*, 2016 SCC OnLine SC 1525] “

27. In ***Hari Vishnu Kamath v. Syed Ahmad Ishaque***¹¹, the Constitution Bench of the Hon’ble Apex Court (7JJ) considered, in the context of writ of certiorari that a writ of certiorari could be issued to correct an error of law. But it was held that, it was essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The Hon’ble Apex Court further considered as to when an error becomes apparent on the face of the record. At this stage, it may be mentioned that Section 114 CPC and Order 47 Rule 1 CPC, *inter alia* uses the expression ‘an error apparent on the face of the record’ as one of the grounds, permissible to invoke the review jurisdiction.

28. In ***Hari Vishnu Kamath*** (supra) the Hon’ble Apex Court observed that no error could be said to be apparent on the face of the record, if it was not self-evident, and if it required an examination or argument to establish it and further that, that test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The Hon’ble Apex Court observed that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being

¹¹ (1954) 2 SCC 881

an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.

29. Para-28 of ***Hari Vishnu Kamath*** (supra) reads as under:

“28. It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? The learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated. Mr Pathak for the first respondent contended on the strength of certain observations of Chagla, C.J. in *Batuk K. Vyas v. Surat Borough Municipality* [*Batuk K. Vyas v. Surat Borough Municipality*, 1952 SCC OnLine Bom 46 : AIR 1953 Bom 133] that no error could be said to be apparent on the face of the record if it was not self-evident, and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.”

30. In ***Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius***¹² the Hon'ble Apex Court observed that the scope of application for review is much more restricted than that of an appeal. The Court of review has only a limited jurisdiction circumscribed by the definitive limits prescribed

¹² (1954) 2 SCC 42

by the statutory provisions. The Court may allow a review on three specified grounds, namely **(i)** discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the review applicant or could not be produced by him at the time when the decree was passed, **(ii)** mistake or error apparent on the face of the record and **(iii)** for any other sufficient reason. The Hon'ble Apex Court further held that the expression "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule".

31. In ***Moran Mar Basselios Catholicos*** (supra), the Hon'ble Apex Court found and recorded that the majority Judges of the High Court in the judgment before the Hon'ble Apex Court did not advert to either of the aspects of the matter, namely, service of notice to all churches and competency of the persons who issued the notice of the meeting and in any case did not come to a definite finding on that question. The Hon'ble Apex Court held that the majority judgments, therefore, were defective on the face of them in that they did not effectively deal with and determine an important issue in the case on which depended the title of the plaintiffs and the maintainability of the suit. The Hon'ble Apex Court held that, that was certainly an error apparent on the face of the record.

32. Paragraphs No.35 and 37 of ***Moran Mar Basselios Catholicos*** (supra) read as under:

“35. Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasise that the scope of an application for review

is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the Court of Review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason. It has been held by the Judicial Committee that the words “any other sufficient reason” must mean “a reason sufficient on grounds, at least analogous to those specified in the rule”. See *Chhajju Ram v. Neki* [*Chhajju Ram v. Neki*, 1922 SCC OnLine PC 11 : (1921-22) 49 IA 144] . This conclusion was reiterated by the Judicial Committee in *Bisheshwar Pratap Sahi v. Parath Nath* [*Bisheshwar Pratap Sahi v. Parath Nath*, 1934 SCC OnLine PC 38 : (1933-34) 61 IA 378] and was adopted by our Federal Court in *Hari Sankar Pal v. Anath Nath Mitter* [*Hari Sankar Pal v. Anath Nath Mitter*, 1949 SCC OnLine FC 4 : (1949-50) 11 FCR 36 at pp. 47-48] . The learned counsel appearing in support of this appeal recognises the aforesaid limitations and submits that his case comes within the ground of “mistake or error apparent on the face of the record” or some ground analogous thereto. As already observed, out of the 99 objections taken in the grounds of review to the judgment of the majority of the High Court only 15 objections were urged before the High Court on the hearing of the application for review. Although most of those points have been referred to by the learned counsel for the appellants, he mainly stressed three of them before us. We now proceed to examine these objections.’

x x x x x x

37. Coming to the judgment of the High Court it appears that the majority of the Judges dealt with the question of the validity of the meeting in a superficial and summary manner. Nokes, J. said:

“The lower court held that the meeting was not duly convened, mainly because notice was not given to the defendants' party (judgment paras 166, 167). The want of notice was not disputed, but was justified in accordance with the Patriarchal monition (Ext. Z). In view of the conclusion stated above, that the adoption of the new constitution was clear evidence of the defendants' repudiation of the Patriarchs' church, and of the fact that the adoption took place in 1934 about 8 months earlier than the meeting at Karingasseraï, the want of notice was justifiable apart from the monition. The lower court's conclusion that the meeting formed only a minority of the church is thus erroneous as is the conclusion (judgment, paras 164, 167) that the meeting was not convened by competent persons.”

Sathyanesan, J. simply observed:

“The only defect pointed out was that no invitation of the meeting was given to the churches under the control of first defendant. The short answer to this is that having already become members of a new Church, they were not entitled to any invitation and were rightly ignored.”

It thus appears that the question as to the competency of the persons who convened the Karingasseraï meeting was disposed of by Nokes, J. in one single sentence at the end of the para quoted above. The learned Judge does not appear to have seriously applied his mind at all to the question of the competency of the convenors of that meeting. Sathyanesan, J. did not deal with the question and thought, quite wrongly, that the only question raised by the defendants was as to whether notice was given to the churches under the control of the defendants. It is pointed out by the learned Attorney General that the judgment of Sathyanesan, J. was only a supplementary judgment, for he prefaced his judgment with the observation that he entirely agreed with the findings of Nokes, J. This argument might have had some force if Nokes, J. had dealt with the point. The position, therefore, is that neither of the Judges applied his mind to the question of the competency of the persons who had convened the Karingasseraï meeting. As to service of the notice on all churches, Nokes, J. in the passage quoted above held that the defendants had

gone out of the Church by reason of their adoption of the new constitution, Ext. AM and that consequently no notice was due to them. Sathyanesan, J. also in the passage quoted above took the view that the defendants having become members of a new church the defendants were not entitled to any invitation to the Karingasseraï meeting. The learned Judges having reversed the finding of the District Judge and held that the defendants had gone out of the Church by adopting the new constitution Ext. AM it became incumbent on them to enquire whether all churches not on the plaintiff's side had adopted Ext. AM and if not whether such of them who had not adopted Ext. AM had been summoned to the meeting. It may be noted in this context that the learned Judges of the High Court in their judgment seem to indicate that the churches which adopted Ext. AM did so by participation at the M.D. Seminary meeting. Reference has been made in the arguments to the various figures set out in the judgment of the District Judge as to the number of Churches which according to the evidence had attended the meeting. It is not clear how many out of 310 churches claimed by the defendants to have been completely on their side according to Ext. 272 had attended the M.D. Seminary meeting and formally adopted the new constitution Ext. AM. If adoption of Ext. AM is the test for determining whether notice is due or not, then it becomes important to consider whether all the churches which were not with the plaintiffs but who had not adopted Ext. AM had been served. Apart from the question of the service of the notice there was also the question as to the competency of the persons who had convened the Karingasseraï meeting where the plaintiffs are said to have been elected. While Mar Geeverghese Dionysius was alive he, as President of the Malankara Association, used to convene the meetings of the Association. Who, after his death, was competent to issue notice of meeting? There appear to be no rules on the subject. In this situation, says the learned Attorney General, if all the members of the Association attended the meeting the defect of want of proper notice does not matter. But did all members attend, even if the defendants' party who had adopted Ext. AM be left out? It does not appear that either of the two majority Judges of the High Court adverted to either of these aspects of the matter, namely, service of notice to all churches

and competency of the persons who issued the notice of the Karingassera meeting and in any case did not come to a definite finding on that question. The majority judgments, therefore, are defective on the face of them in that they did not effectively deal with and determine an important issue in the case on which depends the title of the plaintiffs and the maintainability of the suit. This, in our opinion, is certainly an error apparent on the face of the record.”

33. A Coordinate Bench of this Court in ***Govt. of A.P v. P. Dilli Kumar Chittoor District***¹³ on consideration of the various judgments on the point also held that in the exercise of review jurisdiction neither the Court can sit in appeal nor it is open for review petitioner to re-agitate and re-argue the questions which had already been addressed and decided by the Court. It is not permissible to allow the review petition to be re-heard and decided as an appeal in disguise.

34. So, if the question had already been agitated and argued and addressed and decided by the Court, the same question cannot be re-agitated and re-argued in the review petition. In other words, the question raised, addressed and decided would not be a ground for review as that would amount to re-hearing of the matter on the issue already decided whether rightly or wrongly.

35. But when an issue was raised, argument was advanced and also recorded in the judgment but not addressed and not decided, we are of the view that if such an issue or argument has an impact on an issue involved in the matter and so it cannot be said to be not relevant or germane to the issue involved, then non-consideration of such argument and not addressing the

¹³ 2024 SCC OnLine AP 3846

same and not deciding the same, would certainly be an error of law and if it can easily be found from the record that the argument was advanced and was not addressed by the Court and no finding was recorded thereon, that would be an error apparent on the face of the record and such a ground would also fall under the expression 'on any other sufficient ground' for the purpose of the exercise of the review jurisdiction, following ***Moran Mar Basselios Catholicos*** (supra) and ***Hari Vishnu Kamath*** (supra).

36. Also, in ***Rajender Singh v. Lt. Governor, Andaman & Nicobar Islands***¹⁴ the Hon'ble Apex Court observed and held that the power of review extends to correct all errors to prevent miscarriage of justice. The courts should not hesitate to review their own earlier order when there exists an error on the face of the record and the interest of justice so demands in appropriate cases. In the said case, the grievance of the appellant raised therein was that though several vital issues were raised and documents placed, the High Court had not considered the same in its review jurisdiction. The Hon'ble Apex Court held that the order in the review petition was not correct which really necessitated their interference. The Hon'ble Apex Court reiterated that the law is well settled that the power of judicial review of its own order inheres in every court of plenary jurisdiction to prevent miscarriage of justice.

37. So, it follows, clearly from the judgment in ***Rajender Singh*** (supra) that if vital issues were raised but were not considered, such non-consideration of the relevant issues would be a ground for a review to prevent

¹⁴ (2005) 13 SCC 289

miscarriage of justice. In the said case, the Hon'ble Apex Court observed that the judgment of the High Court did not deal with and decide many important issues as could be seen from the grounds of review and as raised in the grounds of special leave petition/appeal. The Hon'ble Apex Court further observed that the High Court was not justified in ignoring the materials on record which on proper consideration might justify the claim of the appellant therein.

38. Paragraphs No.15 and 16 of ***Rajender Singh*** (supra) are reproduced as under:

“15. We are unable to countenance the argument advanced by learned Additional Solicitor General appearing for the respondents. A careful perusal of the impugned judgment does not deal with and decide many important issues as could be seen from the grounds of review and as raised in the grounds of special leave petition/appeal. The High Court, in our opinion, is not justified in ignoring the materials on record which on proper consideration may justify the claim of the appellant. Learned counsel for the appellant has also explained to this Court as to why the appellant could not place before the Division Bench some of these documents which were not in possession of the appellant at the time of hearing of the case. The High Court, in our opinion, is not correct in overlooking the documents relied on by the appellant and the respondents. In our opinion, review jurisdiction is available in the present case since the impugned judgment is a clear case of an error apparent on the face of the record and non-consideration of relevant documents. The appellant, in our opinion, has got a strong case in his favour and if the claim of the appellant in this appeal is not countenanced, the appellant will suffer immeasurable loss and injury. Law is well settled that the power of judicial review of its own order by the High Court inheres in every court of plenary jurisdiction to prevent miscarriage of justice.

16. The power, in our opinion, extends to correct all errors to prevent miscarriage of justice. The courts should not hesitate to review their own earlier order when there exists an error on the face of the record and the interest of justice so demands in appropriate cases. The grievance of the appellant is that though several vital issues were raised and documents placed, the High Court has not considered the same in its review jurisdiction. In our opinion, the High Court's order in the review petition is not correct which really necessitates our interference.”

39. In ***S. Nagaraj v. State of Karnataka***¹⁵ the Hon'ble Apex Court held that justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Even the law bends before justice. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order.

40. In ***S. Nagaraj*** (supra) the Hon'ble Apex Court held that the review means re-examination or re-consideration. The basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the

¹⁵ 1993 Supp (4) SCC 595

courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. It was further observed that rectification of an order stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. The Hon'ble Apex Court further observed that the expression 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances is sufficient ground to exercise the power.

41. Paragraphs No.18 and 19 of ***S. Nagaraj*** (supra) are reproduced as under:

“18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai, J.)

was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue.

19. Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai* [AIR 1941 FC 1, 2 : 1940 FCR 78 : (1941) 1 MLJ Supp 45] the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh* [(1836) 1 Moo PC 117 : 2 MIA 181 : 1 Sar 175] that an order made by the Court was final and could not be altered:

“... nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.”

Basis for exercise of the power was stated in the same decision as under:

“It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.”

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, ‘for any other sufficient reason’ in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.”

The judgment under Review:

42. Keeping in view the aforesaid principles of the exercise of the review jurisdiction and its scope, we now proceed to consider the scope of the review in the present case with respect to the judgment under review.

43. The claim petition under Order 21 Rule 58 CPC filed by the review petitioner in the execution petition was rejected as not maintainable. The

Order of rejection by the learned Execution Court proceeded on the reasons that O.S.No.98 of 2010 between the plaintiffs/decreed holders and the defendants/judgment debtors was based on the mortgage deed. The mortgage deed was not challenged by the review petitioner (claim petitioner/third party). In the suit O.S.No.199 of 2009 filed by the claim petitioner for partition, including the E.P schedule property Item No.2 though was decreed in her favour but in that suit also she did not pray for declaring the mortgage deed as null and void which was executed by the judgment debtors in favour of the plaintiffs/decreed holders and in that suit O.S.No.199 of 2009 she did not implead the plaintiff of O.S.No.98 of 2010, in which the decree was passed based on the mortgage deed in favour of the plaintiffs/decreed holders, with respect to that suit, executed by the judgment debtors, but not by the third party/claim petitioner. The reasoning given was that there was no attachment of property in execution of the decree. So, the claim petition under Order 21 Rule 58 CPC was not maintainable.

44. The Executing Court recorded that the review petitioner/claim petitioner was the daughter of Arjunaiah @ Chenchiah and the judgment debtors were also the legal heirs of Arjunaiah @ Chenchiah and the property belonged to Arjunaiah @ Chenchiah. The case of the adoption of the claim petitioner (given in adoption) as set up by the plaintiffs/decreed holders, was disbelieved by the Executing Court, observing that there was no proof of adoption and mere mention in the mortgage deed being self-serving statement, there was no proof of the claim petitioner, having been given in adoption. So,

the Executing Court found the claim petitioner/review petitioner to be the daughter of Arjunaiah @ Chenchiah. The E.P. schedule property belonged to Arjunaiah @ Chenchiah and in O.S.No.199 of 2009 which review petitioner/claim petitioner filed for partition was decreed. It was previous to filing of O.S.No.98 of 2010. In that suit O.S.No.199 of 2009, the claim petitioner/review petitioner was declared as having 1/4th share in the property of Arjunaiah @ Chenchiah, the E.P schedule property. She was not made party in O.S.No.98 of 2010 the decree of which was under execution.

45. Challenging the said order of the execution Court in appeal A.S.No.59 of 2020 specific grounds were taken by the appellant (review petitioner) and the argument was also advanced;

- i. that the appellant/review petitioner was not a party to the mortgage deed executed between the judgment debtors and the decree holders and therefore, there was no need for the appellant to question the mortgage deed or impleading the plaintiffs/mortgagees as parties in O.S.No.199 of 2009;
- ii. that the appellant was one of the legal heirs of her father late Arjunaiah @ Chenchiah and the E.P schedule property having been purchased by her father, she had an equal share on par with the judgment debtors by virtue of the provisions of the Hindu Succession Act 1956;
- iii. that the family member certificate, issued by the Tahsildar had no evidentiary value;

- iv. that it was also argued which is reflected from the judgment itself, that the Executing Court, in view of Section 47 read with Order 21 Rules 58, 97, 101, 103 of 1908 CPC, ought to have decided all the questions arising between the parties to the suit in which the decree was passed or the persons claiming through them, without the necessity of filing a separate suit;
- v. that the appellant/review petitioner was claiming independent right of her legitimate share in the E.P. schedule property and could maintain her claim petition under Order 21 Rule 58 CPC and further,
- vi. that mere quoting of the wrong provision of law as Order 21 Rule 58 CPC will not disentitle the appellant to maintain the claim petition maintainable under other provision, even if the decree was a mortgage decree.

46. Relevant part of the appellate judgment under review in paragraphs 10, 11 and 12 are reproduced as under, which shows that the aforesaid submissions were raised and recorded in the judgment itself under review.

“10. Learned counsel for the appellant submits that the Court below without appreciating the evidence on record including the judgment and decree dated 25.01.2018 in O.S No.199 of 2009 on the file of learned I Additional Senior Civil Judge, Nellore and without going into the provisions of the Hindu Succession Act, 1956, Hindu Adoptions and Maintenance Act, 1956 committed serious illegality in dismissing the claim petition filed by the appellant. He further submits that the Court below erred in observing that the appellant failed to take steps to add the D.Hrs as party in O.S.No. 199 of 2009 and hence mere pendency of O.S.No. 199 of 2009 and A.S.No. 56 of 2018 for

partition of the properties including the E.P schedule property are not at all sufficient to set aside the sale dated 31.10.2017 conducted in the present E.P as the Appellant is not a party to the Mortgage Deed dated 20.05.2009 executed between the respondents herein and that the Mortgage Decree dated 13.07.2011 i.e Ex.B1 is a collusive decree to which the appellant herein is not a party. Therefore, the appellant need not question the Mortgage Deed or implead the respondents 1 to 3/ Mortgagees herein as parties to O.S.No. 199 of 2009 on the file of the Court of the I Additional Senior Civil Judge, Nellore. As the appellant is not a party to the Mortgage Deed dated 20.05.2009 executed between the respondents 1 to 4 and 6 respondents 5 and 6 along with 1st J.Dr and that the Mortgage Decree dated 13.07.2011 i.e., Ex.B1 is a collusive decree to which the appellant herein is not a party, the appellant need not question the Mortgage deed or implead the respondents no.1 to 4/D.Hrs/Mortgagees herein as parties to O.S.No.199 of 2009 on the file of the court of the I Additional Senior Civil Judge, Nellore. The Court below miserably failed to see that the respondents no.1 to 4 and others will not have a better title than what the respondents 5 and 6/ J.Drs have in E.P.Schedule property which was allegedly mortgaged to them under Ex.B1 Mortgage Deed No.2088 of 2009, dated 20.05.2009.

11. Learned counsel further submits that the E.P Schedule property was admittedly purchased by the father of the appellant namely Pallala Arjunaiah under a registered Sale Deed No.3845/1981 dated 30.09.1981 and he has constructed a house consisting of ground+1 upper floor and passed away intestate on 15.12.2000. The appellant, who is the legal heir of said Late P. Arjunaiah @ Chenchaiyah is entitled for an equal share on par with the respondents no.5 and 6 and 1st J.Dr by virtue of provisions of the Hindu Succession Act, 1956.

12. Learned counsel further submits that the Court below in spite of holding that the self serving statements made in the Ex.B1 Mortgage Deed are not enough to prove the alleged adoption of the appellant to Pallala Chenchaiyah and that the Family Member certificate issued by the Tahsildar has no evidentiary value gravely erred in dismissing the appellant's claim

petition. He further submits that the Court below failed to see that O.S.No.199 of 2009 was presented on 15.04.2009, prior to Ex.B1 Mortgage Deed dated 20.05.2009. He further submits that the Court below ought to have seen that Section 47 read with Order XXI Rules, 58, 97, 101 and 103 of Code of Civil Procedure, 1908 (CPC) mandates that all questions, arising between the parties to the suit, in which the decree was passed, or the persons claiming through them, shall be determined by the Executing Court without the necessity of filing separate suit. Hence, the appellant, who is claiming independent right of her legitimate share in the E.P.Schedule property can maintain the claim petition and mere quoting of wrong provision of law as Order XXI Rule 58 will not disentitle the appellant to maintain the claim petition though the decree is a mortgage decree.”

47. The appeal was dismissed holding that Order 21 Rule 58 CPC deals with adjudication of claims or objections with regard to properties attached either directly or indirectly between the parties to the proceedings and that not having been done and the objection being to the execution proceedings for bringing the mortgaged property for sale. So observing no illegality, the appeal was dismissed.

48. We may not be understood as entering into the merits of the appeal judgment nor are we observing anything on the aforesaid view taken, as that is beyond the scope of the review jurisdiction.

49. We make it clear that, we have referred the aforesaid order of the execution Court as of the appellate Court only to ascertain if the grounds taken in appeal and argued have any relevance to the issue involved in the judgment under review. Certainly the grounds taken in the appeal to challenge the order of the Executing Court and also referred specifically in the judgment,

as has been noted in paragraphs (supra), to refer again, in particular the ground that mere wrong mention of provision under Order 21 Rule 58 CPC would not make the application not maintainable, as the petition was for determination of the rights to the claim petitioner which could be determined under Order 21 Rules 97, 101 and 103 CPC was not dealt with by the Coordinate Bench. We are of the view that such an argument raised before the Coordinate Bench cannot be said to be without any relevance. The law is well settled which need no reiteration that, mention of a wrong provision of law or no provision at all would not take away the jurisdiction of the Court, if the Court has the jurisdiction under the provisions of the statute, other than the referred one.

50. Similarly, the argument raised and the ground taken with respect to the claim petitioner/appellant not being party to the mortgage deed and so was not required to seek its cancellation; and in view of the decree in O.S.No.199 of 2009 in favour of the claim petitioner/review petitioner to the extent of 1/4th share in the property of her father Arjunaiah @ Chenchiah, which formed part of the E.P. schedule property and thus affecting the rights of the claim petitioner, and so, her application for adjudication of claim in the Execution Petition as third party being maintainable, also cannot be said to have no relevance.

51. Those arguments recorded in the judgment required consideration and adjudication, irrespective of what might have been the ultimate result on the merits of those arguments. It cannot be said that those arguments were

not relevant or not germane to the issue involved, while challenging the order of the Executing Court in the appeal.

52. Learned counsel for the respondents could not point out from the judgment under review that the arguments which were advanced by the appellant's counsel in appeal and recorded in the judgment were addressed, decided and finding recorded by the Coordinate Bench, except submitting that the appellate Court concurred with the finding of the learned Execution Court, and placing reliance in the case of ***Laliteshwar Prasad Singh*** (supra), in which it was held that when the appellate Court agrees with the view of the trial Court on evidence, it need not restate effect of evidence or reiterate reasons given by trial Court; expression of general agreement with reasons given by trial Court would ordinarily suffice. We are of the view that, that is not the issue here. The judgment cited is not on the point of the scope or exercise of the review jurisdiction under the facts and circumstances as involved in the present case.

53. The appellate court (the coordinate Bench), in our view, was required to consider the submissions advanced before it. We find that the material aspects of the matter as raised to challenge the order of the Executing Court remained unaddressed and unanswered in the appellate judgment.

54. Consequently, We are of the view that the judgment in appeal, under review, suffers from apparent error of law on the grounds/submissions advanced by the learned counsel for the review petitioner, in paragraph 13(3),

(4) and (5) (supra) and in view of the law laid down in the judgments, referred to above, *inter alia* and in particular ***Hari Vishnu Kamath*** (supra), ***Moran Mar Basselios Catholicos*** (supra), ***Rajender Singh*** (supra) and ***S. Nagaraj*** (supra).

55. So far as the submission of the learned counsel for review petitioner is that the application for vacation of the interim order was heard and not the appeal, there is nothing on record to substantiate the said submission. Learned counsel for the review petitioner tried to submit that as per the docket order, I.A.No.1 of 2021 was being heard. We are not in agreement, as the docket Order dated 28.12.2021 showed that the appeal was directed to be listed on 05.01.2022 under the caption 'for orders'. So, the appeal was directed to be listed 'for orders' and on 05.01.2022 the appeal was dismissed vide separate judgment. From the judgment itself, it is apparent that the submission of the appellant's counsel (review petitioner herein) were advanced on the merits of the appeal and were also recorded in the judgment.

56. So far as the submission with respect to not framing of the points for determination is concerned by the appellate Court as per the Order 41 Rule 31 CPC, and the judgments cited from both the sides, (1) ***K. V. Lakshman*** (supra), (2) ***H. Siddiqui (dead) by LRs*** (supra), (3) ***K. Karuppuraj*** (supra), (4) ***Malluru Mallappa (D) Thr.Lrs.*** (supra), (5) ***M/s. Canon India Pvt. Ltd.*** (supra), ***Bhagirathi*** (supra) and ***Laliteshwar Prasad Singh*** (supra) on such provision, there cannot be a dispute on the principle as laid down in those judgments, but the question, whether the non-compliance with the

provisions of Order 41 Rule 31 CPC furnishes a ground for review or not, does not arise in the present case, as from the appellate judgment (para-17) it is evident that the Court mentioned "the main question raised is with regard to maintainability of the present application".

V. Conclusions:

57. In view of the consideration made above, our conclusions are:

- (i) Non-consideration of the arguments advanced which have relevance to the issue involved or the grounds taken to challenge the order in appeal which are germane to the issue, but not addressed by the Court would be an error apparent on the face of the record and would furnish a ground for review;
- (ii) The appellate judgment under review though recorded various submissions advanced by the learned counsel for the appellant to challenge the order passed by the Execution Court, but did not address those submissions and did not record any finding thereon. Those submissions, in our view, cannot be said to be unrelated to the issue involved or having no relevance or bearing in the ultimate decision of the appeal. Consequently, those submissions required consideration and determination, irrespective of what could have been the ultimate result on consideration of those submissions;
- (iii) The judgment, under review deserves to be reviewed and set aside for the aforesaid reasons, following the law as laid down by the Hon'ble Apex Court, *inter alia*, in the cases of ***Hari Vishnu Kamath*** (supra),

Moran Mar Basselios Catholicos (supra), ***Rajender Singh*** (supra)
and ***S. Nagaraj*** (supra).

VI. Result:

58. In the result, the Review Petition I. A. No.1 of 2022 is allowed setting aside the Judgment and Decree dated 05.01.2022 passed in A.S.No.59 of 2020. The Appeal is restored to its original number for fresh decision on merits.

59. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

MAHESWARA RAO KUNCHEAM, J

Date: 28.11.2025
Dsr

Note:

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