



A (Exh-2)

**IN THE COURT OF THE CIVIL JUDGE, JUNIOR DIVISION
AT PANAJI**

(Before Jude Torex Sequeira, C.J.J.D., (D-Court), Panaji)

Civil Review Appln. No.1/2018/D
in
Regular Civil Suit No.169/2011/D

CNR No.GANG02-000373-2018

Ritinha C. Monteiro,
d/o late Pascoal Monteiro,
aged 30 years, married,
presently resident of B-6,
Purushottam Apartments, Kalina,
St. Cruz, Mumbai and
permanent residence at
Ritinha Apartments,
Flat No.104/12/105/12,
Dr. Braganza Pereira Road,
St. Inez, Panaji, Tiswadi, Goa.

...Applicant

V/s

1. Joshua Monteiro,
S/o late Pascoal Monteiro,
Aged 32 years, married,
r/o Ritinha Apartments,
Dr. Braganza Pereira Road,

St. Inez, Panaji, Tiswadi, Goa.

2. Mrs. Maria Jessica Vaz,
Wife of Joshua Monteiro,
Aged 32 years, married,
Major, r/o Ritinha Apartment,
Flat No.104/12/105/12,
Dr. Braganza Pereira Road,
St. Inez, Panaji, Tiswadi, Goa.

3. Maria Artemisia Monteiro,
w/o late Pascoal Monteiro,
aged 32 years, married,
r/o Ritinha Apartments,
Flat No.104/12/105/12,
Dr. Braganza Pereira Road,
St. Inez, Panaji, Tiswadi, Goa.

...Respondents

Learned Advocate R. Menezes for the Applicant.

Learned Advocate A. Fernandes for the Respondents.

O R D E R

(Delivered on this 18th day of the month of August, of the year 2018)

This order shall dispose off the application filed by the applicant u/s 114 Code of Civil Procedure.

2. The case of the applicant/defendant no.1 is that this court has passed an order on application for brining Legal heirs on record. Defendant no.2 seeks review of the order dated 31/1/2018 to a limited extent that endorsement that the plaintiff no.1 and 2 reflected as Legal represented of deceased no.1. According to the defendant no.1, the legal representative and legal heirs are different to each other and upon the death of any



party, only legal representative can be brought on record. Hence prayed that the order dated 31/1/2018 be review and the endorsement of the plaintiff no.1 and 2 and legal representative of the deceased no.1 of the deceased no.1 be strike from the order.

3. Reply came to be filed by the defendant no.2 denying the case set out by the plaintiff as Civil Review Application is not maintainable.

4. Learned Adv. R. Menezes argued on behalf of the applicants and learned Adv. Ms A. Fernandes argued on behalf of the respondents.

5. Learned Advocate for the defendant no.2 argued that the legal representatives are different form legal heirs. He has placed on reliance on a judgment of Hon'ble High Court of Madhya Pradesh in **Virendra Kumar Agarwal Vs Sheela Chouhan** in F.A. 103/2013 wherein it was held as under:

"On perusal of the several orders passed by the trial court, it seems that the learned trial court has failed to differentiate between legal representative and legal heir. According to Section 2 (11) of CPC, "legal representative" means a person who in law represents the estate of a deceased person, and includes any

person who intermeddles with the estate of the deceased.....
so suing or sued."

Under order 22 of CPC, after death of either plaintiff or defendant, legal representatives, who are to be substituted for continuing the suit/appeal as the case may be, and not the legal heirs. The suit before the trial court is not for declaration of title, in which, rights of other sons of the deceased were involved, if the substituted legal representative i.e. appellant failed to prove his suit, the suit may be dismissed as the suit has been filed for permanent injunction restraining the respondents no.1 and 2 from making certain constructions. Further, where one of the legal representatives of the deceased plaintiff or defendant, has been brought on record within time, non-bringing of other legal representative has no effect of abatement of suit. Other legal representatives can be substituted later-on. Therefore, there was no question of abatement of the suit before the trial court as the estate of the deceased plaintiff was represented by legal representative i.e. appellant, in whose favour, Will has been executed by the deceased plaintiff. Other sons of the deceased may be proper party but not necessary party looking to the nature of the suit"

6. Per contra learned Advocate for the plaintiff no.1 and 2 argued that the court cannot review the order and only recourse





available to defendant no.1 is the challenging the order before the Superior Court. She has placed reliance on a judgment in **Ganesh Benzoplast Limited vs. Board of Trustees of Marmugoa Port** of Hon'ble Bombay High Court wherein it is held that

"In our opinion, under the guise of the application seeking modification or review, party claiming to be aggrieved, cannot be permitted to invoke the jurisdiction of this Court as an Appellate Court against its own order. In other words, such an application branded either as application for modification or review cannot be an appeal under the guise of such application."

7. It is pertinent to mention herein that there is no affidavit filed by the applicant alongwith the present application. The scope of review of order is clearly laid down by the Hon'ble Supreme court in **Haridas Das vs. Usha Rani Banik and Ors.** reported in MANU/SC/8039/2006

"A perusal of the Order XLVII, Rule 1 show that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or

error apparent on the face of record or any other sufficient reason.

in order to appreciate the scope of a review, Section 114 of the CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the Court since it merely states that it "may make such order thereon as it thinks fit."

8. Under Order 47 Rule 1 Civil Procedure Code an order may be open to review inter alia if there is a mistake or an error apparent on the face of the record.

9. In *Parsion Devi and Ors. Vs. Sumitri Devi and Ors.*

reported in MANU/SC/1360/1997, the Hon'ble Supreme court held 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 the record justifying the court to exercise its power of review under Order 47 Rule I CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "*reheard and corrected.*" A review petition, it must be remembered has a limited purpose and cannot be allowed to be "*an appeal in disguise.*"

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10. This court has passed an order wherein operative order dated 31/1/2018 reads as under:

"The application is rejected with an observation that the plaintiffs to amend the cause title by adding the word deceased in respect of defendant No.1 and to make an endorsement that the plaintiff no.1, 2 and defendant No. 2 are LRs of defendant no.1."

11. It is pertinent to mention that the application for bringing legal heirs on record was rejected. Even assuming/accepting the contention of Ld. Advocate for the defendant No.2/applicant that legal heirs and legal representative are not the same. However legal heirs can be legal representatives and vice versa.

12. This court has not brought the plaintiff no.1 and 2 on record as legal representative of defendant no.2 and as such there is no question to review of the order. Merely allowing the plaintiff to make an endorsement doesn't amount to bringing the legal representative on record. There is no mistake or error apparent on the face of the record. Hence application is dismissed.




eg uere
18/8/18
(Jude Torex Sequeira)
Civil Judge, Junior Division, 'D'
Court, Panaji.