

**(1923) 03 AHC CK 0037**

**Allahabad High Court**

**Case No:** None

Mariam-un-Nissa Bibi

APPELLANT

Vs

Babu Ram and Others

RESPONDENT

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**Date of Decision:** March 16, 1923

**Citation:** (1923) ILR (All) 458

**Hon'ble Judges:** Muhammad Rafiq, J; Lindsay, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

Muhammad Rafiq and Lindsay, JJ.

This is an application for review of judgment. The judgment sought to be reviewed is a judgment passed on the 19th of May, 1922, dismissing under Order XLI, Rule 11, the appeal of one Mariam-un-nissa. The appeal was a second appeal.

2. The application made before us sets out that certain documentary evidence has been discovered since, which, if entertained, would prove that the plaintiff appellant, Mariam-un-nissa, had a good title to the property in dispute.

3. The application for review has been opposed on the ground that it is not competent to this Court to entertain such an application, and various authorities have been cited before us. We need only refer to an authority of our own Court in In the matter of the petition of Nand Kishore ILR (1909) All. 71.

4. It was held there, following two other rulings, that the High Court cannot, in a second appeal, entertain an application for a review of judgment based on the ground that since the disposal of the appeal, documentary evidence has been discovered, which, if sufficiently proved, would have led the court below to come to a different finding, although, had such evidence been discovered before the disposal of the appeal, the Court might have allowed the appellant to withdraw the appeal with a view to apply to the lower appellate court for a review of judgment on the ground of the discovery of fresh evidence.

5. We have already adverted to the fact that the second appeal has already been disposed of by this Court. We can see no ground upon which the present case can be distinguished from the case to which we have just referred. It has been argued before us that the matter before this Court do not a question of fact but a question of law. We cannot agree with this. The case of the plaintiff all through was that certain revenue records had been wrongly prepared and that if the records had been prepared in a proper manner her title to the property would have been established. The courts below found that the plaintiff had failed to give satisfactory proof that the record in question has been wrongly framed. The documentary evidence which has now been preferred is put forward for the purpose of showing that the record was, as a matter of fact, incorrectly framed and to induce us, therefore, to decide in favour of the plaintiff on that basis.

6. The question whether any particular record has been rightly or wrongly framed is certainly a question of fact and not a question of law following the ruling of this Court, to which we have referred above, we hold that this application is not entertainable and we, therefore, dismiss it with costs.

7. Let these papers be returned to the Collector of Moradabad.