AIR 2006 Ori 69 : (2005) OLR 967 Supp

Orissa High Court

Case No: C.R. No. 75 of 1999

Ghanashyam Sahoo		APPELLANT
	Vs	
Kendrapara Municipality and Others		RESPONDENT

Date of Decision: Sept. 30, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1

Citation: AIR 2006 Ori 69 : (2005) OLR 967 Supp

Hon'ble Judges: L. Mohapatra, J

Bench: Single Bench

Advocate: Bijay Ray, C. Choudhury, B. Mohanty, S. Pattnaik, S. Mohanty, for the Appellant; M. Mishra, U.C. Patnaik, B. Mishra, P.K. Das for Opposite Party No. 1, A.S.C., for Opposite Party No. 2 and M. Sahu, P.K. Nandi, R.C. Rath, B. Rath, S.K. Panda, S. Acharya for Opposite Parties 10 (a) to 10 (f), 11, 12, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

L. Mohapatra, J.
This review is directed against the judgment and order dated 23rd of August, 1999 passed by the learned single Judge of this Court in Second Appeal No. 280 of 1991.

2. Plaintiff was the appellant before this Court against a reversing judgment. Case of the plaintiff is that one Giridhari Tripathy executed a Hukumnama on 10-7-1932 in respect of a piece of land measuring Ac. 2.76 decimals authorizing him to reclaim the area and make it fit for cultivation and in return, plaintiff was to possess the same for a period of ten years and appropriate the usufructs. In the year 1935, the plaintiff started cultivation. After death of Giridhari, his son Shyamasundar asked the father of the plaintiff to give up possession of the land in the year 1936. However, the father of the plaintiff did not agree

and continued to possess the land till 1960. The plaintiff thereafter continued to remain in possession till 1984 without any interruption. In the year 1984, Kendrapara municipality started construction of houses for the Sweepers'' Colony in the suit land. In view of the above, the plaintiff filed the suit for declaration of title and confirmation of possession.

3. The Kendrapara municipality filed written-statement stating therein that the land originally belonged to Girdhari Tripathy who had mortgaged the same under a registered mortgage deed dated 10-9-1929 in favour of one Sadhu Charan Behera. Giridhari Tripathy not being in a position to pay back the loan, sold the aforesaid mortgaged land to Sadhu Charan Behera on 13-1-1939 under a registered sale deed. While Sadhu Charan Behera was possessing the said land, he inducted Srimati Bewa, his widow sister-in-law as a sub-tenant in the year 1959. Said Srimati Bewa sold the land to Kendrapara municipality on 31-7-1964 and delivered possession. The suit was decreed by the trial Court and in appeal, the findings of the trial Court were reversed and the plaintiff''s suit was dismissed.

4. Shri Bijan Ray, learned Senior Advocate appearing for the appellant-petitioner, drew attention of the Court to Paragraphs 6 and 8 of the impugned judgment and submitted that a clear error of law has been committed by the learned single Judge while disposing of the appeal. It was also contended that an application for adducing additional evidence had been filed during pendency of the appeal and it was directed that the said petition shall be taken into consideration at the time of hearing of the appeal, but in the impugned judgment the said petition was not at all taken into consideration.

5. In Paragraph 6 of the impugned judgment, it was held that the Hukumnama which was executed as Ext. 9 is a genuine document. On the basis of the said finding, it was contended by Shri Ray that the Hukumnama having been found to be a genuine document, the necessary conclusion is that the appellant under the Hukumnama was allowed to reclaim the land and make it fit for cultivation and also enjoy the same for a period of ten years. In Paragraph 8 of the judgment, the question of claim of title by Kendrapara municipality was considered. The learned single Judge held that Srimati Bewa being a Sikim tenant was not competent to transfer the land in question and any such transfer by a Sikim tenant is void. The Court further held that there is no dispute with regard to the proposition of law laid down by this Court in this regard, but there is no bar for a Sikim tenant to transfer his possession. Shri Ray, learned Counsel appearing for the appellant-petitioner, referring to the aforesaid observation, contended that the Court having found that a Sikimi tenancy is not transferable in one breath, could not have observed that there is no bar for a Sikim tenant to transfer his possession in the other breath. The learned Counsel also relied on some decisions of this Court in this regard.

6. Shri Manoj Mishra, learned Counsel appearing for the respondent-opposite party No. 1, raised a preliminary objection with regard to the scope of interference by this Court. It was contended by Shri Mishra that the scope of interference in a review is very very limited and it is not open for the Court to even correct a finding based on error of fact or of law.

Since a preliminary objection with regard to the scope of interference is raised, I think it is appropriate on my part to deal with the decisions cited by the learned Counsel appearing for both the parties in this regard.

7. The Apex Court in the case of Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius and Ors. AIR 1954 SC 526, while interpreting Order 47, Rule 1 of the Code of Civil Procedure, observed that a review can be allowed 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. While interpreting the third ground, the Court further held that the words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule". Shri Ray also relied on another decision of the Apex Court in the case of Indian Charge Chrome Ltd. and Another Vs. Union of India (UOI) and Others, . The Apex Court in the said decision held that omission on the part of the Court to consider a contention raised in the case is an error apparent on the record and therefore it is permissible to interfere in a review.

8. Shri Mishra, learned Counsel appearing for the respondent-opposite party No. 1, also relied on a decision of the Apex Court in the case of Lily Thomas, etc. etc. v. Union of India and Ors. 2000 (3) Sup 601 : AIR 2000 SC 1650. The Apex Court in the said decision held that the power of review can be exercised for correction of mistake and not to substitute a view. Such powers can be exercised within the limits of the Statute and a review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. In the case of Parsion Devi and Ors. v. Sumitri Devi and Ors. 1998 (2) CLJ 723 the Apex Court held that the power of review can be exercised when there is "a mistake or an error apparent on the face of the record". The aforesaid words mean "an error or mistake which is self-evident", but re-hearing of the matter for detecting an error is beyond the scope of review. On an analysis of the aforesaid decisions, it becomes clear that as has been decided in the case of Moran Mar Basselios Catholicos and Anr. v. Most Rev. Mar Poulose Athanasius and Ors. AIR 1954 SC 526 (supra), the power of review can be exercised on three grounds laid down by the Apex Court in the said decision.

9. Shri Ray, the learned Counsel for the appellant-petitioner puts much stress on the ground of error apparent on the face of the record. According to him, in the impugned judgment the learned single Judge having held that transfer of land by a Sikim tenant is void could not have again held that there is no bar for a Sikim tenant to transfer his possession. The Court was called upon at the time of hearing to look into the evidence and find out as to whether Srimati Bewa was a Sikim tenant or not and whether the transfer of the land by her in favour of Kendrapara municipality is void or not I am afraid, in view of the aforesaid decisions of the Apex Court, this Court while dealing with a review petition cannot re-hear the matter on merit as an appeal. Moreover, the learned single

Judge has made a distinction in the impugned judgment by observing that a Sikim tenant though is not competent to transfer any land which obviously means "ownership" can transfer possession. Shri Ray, learned Counsel appearing for the appellant-petitioner, submitted that even if such an interpretation is accepted, the same amounts to wrong appreciation of fact and law and the same cannot be rectified in a review application, as is evident from the observations made by the Apex Court in the decisions referred to above and moreover, two views being possible on the aforesaid question, the Court cannot entertain a review application to find out as to which view is correct. In view of the discussions made above, I am of the view that there is no scope for review of the impugned judgment within the parameters laid down by the Apex Court on this score. Though the learned Counsel appearing for both the parties had also argued on the merits of the case, having held that the ground taken does not come within the purview of a review, I have not discussed the case on merits.

10. The second ground taken by Shri Ray, the learned Counsel appearing for the appellant-petitioner, is that an application for adducing additional evidence was filed and though the Court had directed that the said petition shall be considered at the time of hearing of the appeal, the said petition was not at all taken into consideration while disposing of the appeal. From the impugned judgment, I do not find anything to show that either the counsel for the appellant or the counsel for the respondents brought this fact to the notice of the Court when the appeal was heard. The learned Counsel for the appellant having not brought it to the notice of the Court, it can only be presumed that he did not want to press the said petition at the time of hearing of the appeal. I also do not find any reason to interfere with the impugned judgment on the above ground.

11. Both the grounds taken by the appellant-petitioner having failed, the Civil Review is dismissed.