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(2012) 08 AHC CK 0224

Allahabad High Court

Case No: Review Petition Defective No. 353 of 2012

Brij La] and Others	APPELLANT
Vs	
Piyarey Hassan and Others	RESPONDENT

Date of Decision: Aug. 23, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1
- Constitution of India, 1950 - Article 226

Citation: (2013) 4 ALJ 349

Hon'ble Judges: Saeed-uz-Zaman Siddiqi, J

Bench: Single Bench

Advocate: Raj Mani Dubey, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Saeed-uz-Zaman Siddiqi, J.
Heard learned counsel for the petitioners and perused the record. The petitioners have sought for review of judgment passed by this Court on 17.08.1999 in second appeal No. 273 of 1984 on the ground that the petitioners were owners in possession of the said land and the Court has wrongly given presumption that Biphai has started living about 10 years before; that the Lower Appellate Court has considered the evidence of the ownership; that the Commissioner''s map found that the disputed property exists at Plot No. 546 and the remaining portion exists in Plot No. 547; that the suit property being 4 Biswa is completely replace (sic) plaintiff''s case.

2. In Haridas Das Vs. Smt. Usha Rani Banik and Others, , the Hon''ble Apex Court has held as under:-

Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict. This is amply evident from the explanation in Rule 1 of the Order XLVII which states that the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the Court should exercise the power to review its order with the greatest circumspection.

3. In this case, the Hon"ble Supreme Court has relied upon its earlier law laid down in Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, in which the Hon"ble Apex Court has held as follows:

There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which states one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

4. In Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, it was held that:-

It is well settled law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, CPC. In connection with the limitation of the powers of the Court under Order XLVII, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, speaking through Chinnappa Reddy, J. has madethe following pertinent observations:

It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merit. That would be in the province of a court of appeal. A power of review is not to be confused with appellate power which may enable

an appellate Court to correct all manner of error committed by the Sub-ordinate Court.

The following observations in connection with an error apparent on the face of the record in the case of Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, were also noted:

An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evidence and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ.

Relying upon the judgments in the cases of Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, it was observed as under:

Under Order XLVII, Rule 1, CPC a judgment may be open to review inter alia, if there is a mistake or an error apparent on the face of the record. 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 XLVII, Rule 1, CPC. In exercise of the jurisdiction under Order XLVII, 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.

5. In view of the law as discussed above, a review petition cannot be treated to be a revision or an appeal in disguise. Rehearing at all is not permissible under Order 47, Rule 1 of Code of Civil Procedure. By the petition, the petitioner has attempted to postulate rehearing of the dispute between the parties and has highlighted all the aspects of the case and attempted to impress upon the Court that the judgment passed by this Court earlier, on merits, with detailed discussions was an erroneous decision and deserves to be reheard and corrected. Even if it is presumed that two opinions can be found the Court cannot review a judgment or order even on this ground. Crux of the matter is that an error apparent on the record and can be established by lengthy and complicated argument cannot be cured under Order 47, Rule 1 of the Code of Civil Procedure. With these observations, review petition is dismissed.