

(2016) 10 AHC CK 0113

ALLAHABAD HIGH COURT

Case No: Civil Misc. Review Application No. 387995 of 2015 in Second Appeal No. 873 of 2015.

Ram Lakhan - Appellant @HASH
Ashwani Kumar and 2 Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Oct. 3, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 114

Citation: (2016) 10 ADJ 685 : (2016) 6 AllWC 6046 : (2016) 119 ALR 659 : (2016) 4 CivilJ 773 : (2017) 134 RD 211

Hon'ble Judges: Pramod Kumar Srivastava, J.

Bench: Single Bench

Advocate: M.A. Mishra, Advocate, for the Appellant; G.C. Shukla, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Pramod Kumar Srivastava, J. - Second Appeal No. 873/2015 was dismissed under Order-41, Rule-11 CPC by order dated 12.10.2015 of this Court. Against the said order present Review Application has been filed by the appellant.

2. The Original Suit no. 138/2015 (Ram Lakhan v. Ashwani Kumar & another) was filed for the relief of permanent injunction on the basis of ownership and possession of disputed property claiming that plaintiff is owner in possession of disputed property, and the defendant-respondents have no right or title over said property of Abadi land, therefore, they be restrained by means of permanent injunction.

3. Said suit was decreed by the judgment dated 31.8.2013 passed by Additional Civil Judge (J.D.) Third, Bhadohi at Gyanpur. Against said judgment, the defendants had filed two separate Civil Appeals no. 74/2013 (Deena Nath v. Aswhwani & others) and no. 75/2013 (Ashwani v. Ram Lakhan & others). Both the appeals were consolidated,

and after affording opportunity of hearing to parties, were decided by one judgment dated 17.9.2015 of Additional District Judge, Court No.-2, Bhadohi at Gyanpur, by which these appeals were allowed and the judgment of trial court dated 31.8.2013 was set aside, and original suit was dismissed. Then plaintiff of original suit had preferred Second Appeal no. 873/2013 (Ram Lakhan v. Ashwani Kumar and others) challenging the judgment dated 17.9.2015 of the first appellate court. In said second appeal, this court had afforded opportunity of hearing to the parties and thereafter passed judgment dated 12.10.2015, by which second appeal was dismissed. Against said judgment of this Court in said second appeal, present review application has been moved by appellant of second appeal (plaintiff of original suit).

4. Learned counsel for the appellant (applicant of review application) submitted that judgment of trial court as well as lower appellate court were passed on evidence and interpretation of contents of registered sale-deed dated 20.7.1968. His submission was that trial court had rightly interpreted the facts mentioned in the sale-deed, but lower appellate court in first appeal had given wrong interpretation of contents of document. His main argument was that when the interpretation of document is required, then it is substantial question of law that was not considered by this court at the time of passing of impugned judgment.

5. These contentions were refuted by learned counsel for the respondents-defendant, who submitted that the dispute mentioned in original suit, which was before lower courts, related to ownership and possession of Abadi land, which could be decided only on the basis of adduced evidences, as has been done by both the lower courts. In its judgment the Civil Judge had not only passed erroneous judgment ignoring the specific admissions made by plaintiff against his own case, but in spite of specific description of property mentioned in sale-deed dated 20.7.1968, and even finding it correct, the trial court had given finding that boundaries mentioned in said sale-deed have no binding effect. His submission is that if a property is sold by description of boundaries, then purchaser is bound by description of that property through its boundaries; so the judgment of trial court was passed on superficial wrong findings without properly considering the evidences; and when the first appellate court had rightly scrutinised evidences and rectified those errors, in which there was no illegality. His further submission is that neither interpretation of any document was involved in this matter during second appeal nor any substantial question of law was involved. Since no substantial question was there before this Court during hearing of second appeal, therefore, there was no error in judgment dated 12.10.2015 of this Court.

6. From perusal of record, it is found that dispute in original suit and in the appeals between the parties related to ownership and possession of disputed Abadi land. Such dispute could only be decided on the basis of evidences. The two lower courts had passed their judgments independently on those evidences. In said matter, the

description of property detailed in sale-deed dated 20.7.1968 was involved that was an important evidence. Trial court had superficially considered that description of property and even after finding its description against plaintiff's case, had observed that boundaries of sale-deed is not binding; but the first appellate court had meticulously considered all other evidences including the said sale-deed and passed its judgment. At the time of hearing of Second Appeal, this Court had found that said judgment of first appellate court is meticulously correct and there is no perversity in it. This Court, during judgment of Second Appeal had held that the only point of dispute relating to finding of fact of first appellate court and a perusal of judgment of both the courts below reveal that findings of fact reached by them may be one of the finding that may be passed on the basis of available evidences. Since the first appellate court had legal jurisdiction to give finding of fact and had given accordingly, which was no infirm or perverse, therefore, this Court in second appeal had held that it would not be proper to re-appreciate the evidences to disturb such finding of fact recorded by the first appellate court.

7. It is settled legal position that if, from the available evidences, two inferences are probable, but one inference has been reached in judgment under challenge, which is not perverse, then such findings should not be disturbed in Second Appeal or in revision or in review.

8. From perusal of record, it is found that this court had rightly found that no question of law, much less a substantial question of law was involved in this case before this court in second appeal and there was no infirmity or perversity in findings of first appellate court. Accordingly, this court had dismissed second appeal and there appears no reason to interfere in it.

9. The provisions of review are mentioned Section 114 and Order 47, Rule 1 of CPC. Section 114 CPC and Order 47, Rule, 1 CPC reads as under:-

"114. Review.-Subject as aforesaid, any person considering himself aggrieved-

(a) By a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.

(b) By a decree or order from which no appeal is allowed by this Court, or

(c) By a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."

Order 47, Rule 1 , CPC, read as under:-

"1. Application for review of judgment:-

(1) Any person considering himself aggrieved-

- (a) By a decree or order from which an appeal is allowed, but from no appeal has been preferred,
- (b) By a decree or order from which no appeal is allowed, or
- (c) By a decision on a reference from a Court of Small Causes,

And who, from the discovery of new and important matter 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 on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation.-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."

10. The main point of determination is as to whether the present review petition is maintainable or not, when matter relating to it has been decided in the Second Appeal. Review Petition has been moved on the factual aspects of the matter and merits of the case. There is not "mistake or error apparent on the fact of record". A perusal of impugned order of this Court, makes it explicitly clear that argument advanced and points raised by applicant-appellant were considered by this Court and then order in question was knowingly passed without any clerical or other mistake or error apparent. Therefore, this review petition is not maintainable. The argument of counsel for the applicant-appellant on merits of the case cannot be entertained or sustained in review petition.

11. For the reasons discussed above, this review petition is dismissed.