

Neutral Citation No. - 2023:AHC:220012

Reserved on 17.11.2023

Delivered on 21.11.2023

Court No. - 48

Case :- CIVIL MISC REVIEW APPLICATION No. - 527 of 2023

Applicant :- Babau Ram (Since Deceased) And 5 Others

Opposite Party :- Deputy Director Of Consolidation Mirzapur And 14 Others

Counsel for Applicant :- Sanjeev Kumar Tyagi

Counsel for Opposite Party :- Hari Nath Tripathi

Hon'ble Saurabh Shyam Shamshery,J.

1. This is an application to review the judgment dated 26.09.2023 passed by this Court in Writ-B No. 131 of 1977.

2. The application is filed mainly on following grounds:

“IV. Because the mortgager claim their title as fixed rate tenants and not as sir or khudkasht on the date of mortgage according to Section 14 (2)(b), the mortgage shall subject to his paying to the State Government the amount payable shall be entitle as sirdar of the land. The provisions of Section 14 are given as follows:

“14. Estate in possession of a mortgagee with with possession- (1) Subject to the provisions of sub-section (2), a mortgagee in possession of an estate or share therein shall, with effect from the date of vesting, cease to have any right to hold or possess as such any land in such estate.

(2) Where any such land was in the personal cultivation of the mortgagee on the date immediately proceeding the date of vesting-

(a) if it was sir or khudkasht of the mortgagor on the date of the mortgage, the same shall, for purpose of Section 18 be deemed to be the sir or khudkasht of the mortgagor or his legal representative.

(b) if it was not sir or khudkasht of the mortgagor on the date of the mortgage, the mortgagee shall, subject to his paying to the State Government within six months from the date of vesting an amount equal to five times the rent calculated at hereditary rates applicable on the date immediately preceding the date of vesting, be deemed, for purpose of Section 19, to have held such land on the date aforesaid as a hereditary tenant thereof at the said rate of rent.

Provided that if the mortgagee fails to pay the amount aforesaid within the time allowed, he shall there upon lose all rights in such land which shall be deemed to be vacant land and he shall be liable to ejectment on the suit of the Gaon Sabha [or the Collector] under Section 209 as if he were a person in possession thereof otherwise than in accordance with the provisions of this Act.

Explanation (I)- For the purposes of this section a mortgagee in possession includes a thekedar of his rights as mortgagee in the land.

Explanation (II)- Where any land has been mortgaged with possession and the mortgagor makes a second or subsequent mortgage of such land in favour of the same or different person, the expression “ on the date of the mortgage ” shall mean the date of the mortgage in pursuance of which the mortgagor first transferred possession to mortgagee.

V. Because Section 18 of U.P.Z.A & L.R. Act provides the settlement of fixed rate tenants as bhumidhar and entitled to take or retain possession as bhumidhar thereof.

VI. Because Section 19 of U.P.Z.A & L.R. Act clearly laid down the provisions of the land in the holdings to be settlement with the tenants as Sirdar.

VII. Because Section 231 of U.P.Z.A & L.R. Act declare that all the persons except as provided in Section 233 and 234 subject to his paying he rent, and adhivasi shall continue to have all the rights and liabilities which he possessed or was subject to in respect of land on the date immediately preceding the date of vesting.”

“X. Because the Hon’ble Court has not considered this aspect of the matter and applied the provisions of U.P.Z.A Act treating as if the mortgager was sir or khudkasht on the date of executing the mortgage whereas in the present case the mortgager were fixed rate tenant and not the sir or khudkasht on the date when the mortgage was executed in the year 1929. therefore, the petitioners were adhivasi on the date of vesting and they were rightly declared sirdar and bhumidhar in accordance with law given under Section 14, 19 and 240A of the U.P.Z.A & L.R. Act.

XI. Because the petitioner specific grounds taken in grounds A,B,C & D have not been considered and thus the judgement in question is erroneous and against the provisions of law, liable to be recalled.”

3. Sri Sanjeev Kumar Tyagi, learned counsel for review-petitioners, submitted that case of petitioners in the light of above referred grounds was not considered by this Court and as such there was an error on the face of record.

4. Per contra, Sri Alok Tripathi, Advocate holding brief of Sri Hari Nath Tripathi, learned counsel for contesting-respondents, has submitted that order under review was passed on merits after considering rival submissions and there is no error apparent on the face of record.

5. Heard learned counsel for parties and perused the material available on record.

6. Before entering into merit of case and considering rival submissions and record, it would be appropriate to mention few paragraphs of a recent judgment passed by Supreme Court in **S. Murali Sundaram vs. Jothibai Kannan and Others 2023 SCC OnLine SC 185** as under:

“15. While considering the aforesaid issue two decisions of this Court on Order 47 Rule 1 read with Section 114 CPC are required to be referred to? In the case of Perry

Kansagra (supra) this Court has observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit in appeal over its own order. It is observed that a rehearing of the matter is impermissible in law. It is further observed that review is not appeal in disguise. It is observed that power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed that it is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy has been finally decided. After considering catena of decisions on exercise of review powers and principles relating to exercise of review jurisdiction under Order 47 Rule 1 CPC this Court had summed upon as under:

“(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the face of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit.”

16. It is further observed in the said decision that an error which is required to be detected by a process of reasoning can hardly be said to be an error on the face of the record.

17. In the case of Shanti Conductors (P) Ltd. (supra), it is observed and held that scope of review under Order 47

Rule 1 CPC read with Section 114 CPC is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue questions which have already been addressed and decided. It is further observed 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 record justifying the court to exercise its power of review under Order 47 Rule 1 CPC.”

(Emphasis supplied)

7. In order to consider rival submissions, I have carefully perused the order under review.

8. The arguments of learned counsel for review-petitioners were recorded in paragraphs no. 8 and 9 of judgment under review which includes issue of limitation with regard to filing a case for redemption as well as effect of Section 240A of U.P. Zamindari Abolition and Land Reforms Act, 1950 (*hereinafter referred to as “Act, 1950”*) as well as grounds mentioned in writ petition.

9. This Court has considered rival submissions from paragraphs no. 13 and 21 of the judgment and has relied on a judgment passed by Supreme Court in **Pratap Singh alias Babu Ram and another vs. Deputy Director of Consolidation, Mainpuri and others, (2000)4 SCC 614** and relevant paragraph 16 thereof was relied upon and for reference the same is reproduced hereinafter:

“16. If in these circumstances, the mortgagee continues to remain in possession in spite of his rights having come to an end by the force of law, what would be the character of his possession; whether the possession would immediately become “hostile” to that of the mortgagor who has acquired “bhumidhari” rights under Section 18, or the mortgagee would be treated to be continuing in possession for and on behalf of the mortgagor. It is, at

this stage, that the words used in Entry 30 relating to suits under Section 209 of the Act as set out in Appendix III to the Rules made under the ZA&LR Act become relevant. In column 3 meant for “Description of suit, application and other proceeding”, the words used are: “Suit for ejectment of a person taking or retaining possession of the land unlawfully and for damages.” These words contemplate a suit for ejectment of a person who has taken possession unlawfully or continues to retain that possession unlawfully. In the case of possessory or usufructuary mortgage, possession is delivered to the mortgagee. Delivery of possession to the mortgagee is a sine qua non of such a mortgage. It is delivered in terms of the mortgage by the mortgagor of his own volition to the mortgagee. The mortgagee gets possession over the land only because it has been delivered to him in terms of the mortgage deed which equally binds him. The entry into possession of the mortgagee in these circumstances cannot be said to be unlawful. Once the possession was delivered to the mortgagee lawfully by the mortgagor himself, the further retention of that possession by the mortgagee would obviously be with the consent of the mortgagor and the mortgagee shall be treated to be retaining the possession for and on behalf of the mortgagor till the mortgage is redeemed. The character of possession of the mortgagee who was lawfully inducted into possession by the mortgagor, does not change at any stage and it continues to be lawful possession.

10. Learned counsel for review-petitioners has submitted that case of petitioners was under Section 14(2)(b) of Act, 1950 whereas this Court has considered the case in terms of Section 14(2)(a) of Act, 1950. However, this Court has taken a view that possession of petitioners was permissive on basis of above referred judgment.

11. As held in **S. Murali Sundaram (supra)** that where 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 record justifying the Court to exercise its power of review under Order 47 Rule 1 CPC, no case for review is made out.

12. All arguments raised by learned Counsel for review petitioner are akin to challenge the judgment on merit and in the garb of a review petition, this Court could not sit as an Appellate Court. Since, there is no misconception on law or fact, therefore, there is no ground to review the judgment passed by this Court.

13. Review application is accordingly dismissed.

Order Date :-21.11.2023

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