

GAHC010171992022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./36/2023

ARCHANA DAS
W/O- LATE PRAN KRISHNA DAS, R/O- WARD NO. 13, P.O. BILASIPARA,
DIST.- DHUBRI, ASSAM, PIN- 783348

VERSUS

REETA DAS AND 2 ORS
W/O LATE DHIRENDRA NARAYAN DAS, P/R/O WARD NO. 13, P.O.-
BILASIPARA, DIST-DHUBRI, ASSAM, PIN-7833548, P/R/A HOUSE NO. 36,
PRAGATI PATH NO. 1, BYE LANE NO. 3, JYOTIKUCHI DHUPOLIA, P.O.-
SAUKUCHI, GUWAHATI-781040, DIST-KAMRUP(M), ASSAM

2:MISS TANUSHREE DAS
D/O LATE DHIRENDRA NARAYAN DAS
P/R/O WARD NO. 13
P.O.-BILASIPARA
DIST-DHUBRI
ASSAM
PIN-7833548
P/R/A HOUSE NO. 36
PRAGATI PATH NO. 1
BYE LANE NO. 3
JYOTIKUCHI DHUPOLIA
P.O.-SAUKUCHI
GUWAHATI-781040
DIST-KAMRUP(M)
ASSAM

3:DHURUBA DAS
S/O LATE DHIRENDRA NARAYAN DAS
P/R/O WARD NO. 13
P.O.-BILASIPARA

DIST-DHUBRI
ASSAM
PIN-7833548
P/R/A HOUSE NO. 36
PRAGATI PATH NO. 1
BYE LANE NO. 3
JYOTIKUCHI DHUPOLIA
P.O.-SAUKUCHI
GUWAHATI-781040
DIST-KAMRUP(M)
ASSA

Advocate for the Petitioner : MS S SHARMA,

Advocate for the Respondent : MR. A K RAY,

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

24.10.2024

Heard Ms. S. Sharma, learned counsel for the petitioner and also heard Mr. A.K. Ray, learned counsel for the respondents.

2. This review petition, under Section 114, read with Section 151 of the Code of Civil Procedure is directed against the order dated 09.06.2022, passed by this Court in I.A. (Civil) No.3164/2019, arising out of FAO No.57/2019. It is to be noted here that vide order dated 09.06.2022, this Court was pleased to direct the parties to maintain status quo, in view of the order dated 31.10.2019 passed in I.A.(Civil) No.3164/2019, arising out FAO No.57/2019.

3. Ms. Sharma, learned counsel for the review petitioner, submits that over the suit land, both the parties have equal rights and that the petitioner is a widow and after the death of her husband, she applied for a house under the Pradhan Mantri Awas Yojana (PMAY) scheme and the same was allotted to her. But she could not construct the house

as one Title Suit, being Title Suit No.6/2019, is instituted by the respondents, wherein the respondents have alleged dispossession from a part of the suit property, for which the respondents have filed one petition before the learned Trial Court for injunction and the learned Trial Court had not granted any relief. Against the said order, the respondents herein had preferred one FAO, being FAO No.57/2019. In the said FAO the respondent herein had filed an interlocutory application, being I.A.(Civil) No.3164/2019 for granting injunction and in the said I.A. this Court was pleased to direct the parties to maintain status quo over the suit property, vide order dated 30.10.2019 and the said order of status quo was made absolute vide order dated 09.06.2022.

3.1 Ms. Sharma, learned counsel for the petitioner, further submits that on account of the said order dated 09.06.2022, the petitioner could not construct her house, which was allotted by the government under the PMAY scheme and that if the house could not be constructed within the stipulated period, then the fund allotted for the same has to be returned to the government and on such count, she will suffer irreparable loss. Ms. Sharma further submits that on the other hand, the respondents have been constructing one RCC house over the said plot of land without obtaining any NOC from the petitioner, which is not at all permissible and therefore, it is contended to allow this petition.

4. On the other hand, Mr. Ray, learned counsel for the respondents has opposed the petition on the ground that the Title Suit No.6/2019, is in final stage and the next date has been fixed on 06.12.2024, for argument and if at this stage the order dated 09.06.2022, is reviewed, then it may cause delay in disposal of the case.

5. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the petition and the documents placed on record and also perused the order dated 09.06.2022 passed by this Court in I.A.(Civil) No.3164/2019.

6. The ground for review has been well settled by the Hon'ble Supreme Court in catena of decisions. In the case of **Kamlesh Verma Vs. Mayawati and Others**, reported in **2013 AIR SCW 4944**, Hon'ble Supreme Court has held that review can entertained on the following grounds:-

- (i) Discovery of new and important matter of evidence which, after exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason;

6.1 In the case of **Inderchand Jain vs. Motilal**, (2009) 14 SCC 663, in paragraphs 7 to 11, it is observed and held as under:-

"7. Section 114 of the Code of Civil Procedure (for short "the Code") provides for a substantive power of review by a civil court and consequently by the appellate courts. The words "subject as aforesaid" occurring in **Section 114** of the Code mean subject to such conditions and limitations as may be prescribed as appearing in **Section 113** thereof and for the said purpose, the procedural conditions contained in Order 47 of the Code must be taken into consideration. **Section 114** of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47 of the Code; Rule 1 whereof reads as under:

"17. The power of a civil court to review its judgment/decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1 CPC, which reads 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 which 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 of the court which passed the decree or made the order.”

7. Bearing the above principle in mind, now we will examine the fact and circumstances of the case in hand as to whether there is ground for review of the order dated 09.06.2022.

8. It is not in dispute that over the suit land, both the parties have equal rights. It is also not in dispute that the petitioner is a widow and after the death of her husband, she applied for a house under the Pradhan Mantri Awas Yojana (PMAY) scheme and the same was allotted to her. But she could not construct the house on account of the order, so passed by this court in I.A.(Civil) No.3164/2019, arising out of FAO No.57/2019, wherein this Court was pleased to direct the parties to maintain status quo over the suit property, vide order dated 30.10.2019, which was made absolute vide order dated 09.06.2022. It is also not in dispute that if the fund allotted by the government for construction of the house allotted to the petitioner and the fund allotted could not be utilized in time the same has to be refunded and in such event, as submitted by Ms. Sharma the petitioner will suffer irreparable loss. This aspect has not been taken into account at the time of passing the order dated 09.06.2022.

9. In the given fact situation this court is of the considered view that this is a ‘sufficient reason’ as provided under **Order 47 Rule 1 CPC**, and as laid down in the case of **Kamlesh Verma (supra) Inderchand Jain (supra)**, for review of the order dated 09.06.2022.

10. Though the petition is being resisted on the ground that the next date of the Title Suit has been fixed for hearing argument 06.12.2024, and review of the order dated 09.06.2022, will cause delay in disposal of the Title Suit, yet, the said submission left this court unimpressed.

11. Further, it appears from the materials placed on record and also from the submission of Ms. Sharma that the respondents herein have been constructing one RCC house over the disputed plot of land without obtaining NOC from the present petitioner, over which plot of land she has also equal right.

12. Under the aforementioned facts and circumstances, this Court is inclined to review the order dated 09.06.2022, passed by this Court in I.A.(Civil) No.3164/2019 arising out of FAO No.57/2019. Accordingly, the direction to maintain status quo over the suit property stands vacated.

13. In terms of above, this review petition stands disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant