

GAHC010191112023



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

Case No. : Review.Pet./37/2024

SOMNATH MITRA
S/O LATE RABINDRA MITRA,
C/O PRASANTA CHAKRABORTY, PRADIP SANGHA LANE, SANTIPARA,
P.O.- DIBRUGARH, PIN- 786001.

VERSUS

ARABINDA MITRA
S/O LATE RABINDRA MITRA,
R/O MORANHAT, NEAR THANA TINIALI, P.O.- MORHANHAT, DIST.-
DIBRUGARH, PIN- 785670.

Advocate for the Petitioner : MR SISHIR DUTTA, MS S MOCHAHARI, MR. K
UPAMANNYA, MR. S DUTTA

Advocate for the Respondent : MS. B CHOUDHURY,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

10.09.2024

1. Heard Mr. S. Dutta, learned Senior counsel assisted by Mr S Dutta,
learned counsel for the review petitioner. Also heard Ms. B Choudhury, learned

counsel for the respondent.

2. The present application is filed under order 47 Rule 1 of the Code of Civil Procedure read with Section 114 of the Code of Civil Procedure, 1908 seeking a review of the judgment and order dated 21.04.2023 passed by this Court in RSA/90/2010.

3. By the aforesaid judgment, the substantial question of law framed on 09.02.2011 was answered in favour of the appellant/defendant and the matter was remanded back to the learned Appellate Court below in terms of the determination made therein.

4. The grounds urged for seeking review are to the following effect:

I. The substantial question of law formulated in the disposal of appeal is not substantial questions of law, inasmuch as the defendant admitted in his written statement that the Schedule-B land is part of Schedule-A land.

II. The finding of this Court that the Survey Commissioner was appointed on the application of the plaintiff is not correct rather it was filed by the defendant and therefore, the credibility of the survey report cannot be questioned in a second appeal and such was a finding of fact and second appeal cannot be the third stage of the trial.

III. As there was no application for examination of the Commissioner, the finding of this Court that the Survey Commissioner was not examined is an error apparent on the face of the record, inasmuch as the Commissioner's report is valid and at the second appellate stage, finding of facts cannot be made out for adjudication.

IV. The suit land means Schedule-A and Schedule-B land and the Commissioner has rightly surveyed the suit land and found the petitioner/plaintiff in possession of an area of 5.5 lechas of land and therefore, measurement should have been confined to the suit land and not the defendant's land.

5. The other grounds urged also touches the merit of the determination made by this Court in its judgment and order dated 21.04.2023.

6. The law is well settled that a review application is maintainable on discovery of new and important matters or evidence which, even after exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him when the decree was passed, or the order was made. Secondly, such a review application shall be maintainable on account of such mistake or error apparent on the face of the record or for any other sufficient reason.

7. The material error, to exercise the power of review must be manifest on the face of the order and would result in a miscarriage of justice or undermine its soundness (**Ref.. Col. Avtar Singh Sekhon -Vs- Union of India and Others** reported in **1981 SCC (1) 168**).

8. The error apparent on the face of the record shall mean an error that is self-evident and no process of reasoning is required to detect such error. Therefore, when an error is not self-evident and is required to be detected by the process of reasoning, such error cannot be described as an error apparent on the face of the record.

9. It is also equally well settled that while exercising review jurisdiction, a Court cannot appreciate the evidence to arrive at a different conclusion, even

when two views are possible in a matter.

10. It is well settled that any other sufficient reasons shall mean "a reason sufficient on the grounds at least analogous to those specified in rule". (Ref: **Union of India –Vs- Sandur Manganese & Iron Ores Ltd.** reported in **2013 8 SCC 337.**)

11. Now, coming to the case in hand, a bare perusal of the ground of review pleaded and urged by the learned senior counsel leads to an unhesitant conclusion in the mind of this Court that the present review is nothing but an appeal in disguise. In this review petition, amongst others, it is urged that the substantial questions of law formulated in the connected disposed of second appeal are not substantial questions of law. The survey report is a finding of fact, therefore, this Court could not have re-appreciated such evidence etc.

12. Another aspect of the matter is that the error stated to have been apparent i.e. that this Court recorded that application for Survey Commissioner was filed by the review petitioner and not by the defendant's opposite party, even if assumed to be correct, same cannot be treated as an error apparent on the face of the record and same can be a typographical error and such recording is having no bearing on the final conclusion and the determination made in the judgment and order dated 21.04.2023 passed in RSA/90/2010.

13. Accordingly, this Court is of the view that the review petitioner has urged to reappreciate the evidence to arrive at a different conclusion as to what has already been held. Therefore, this Court is of the unhesitant view that this review petition lacks merit and accordingly, the same stands dismissed.

JUDGE

Comparing Assistant