

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.52 of 2015

In
First Appeal No. 36 of 2013

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Hiralal Pandit & Anr

.... Petitioners

Versus

Durgawati Devi & Ors

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Kaushal Kishore Mishra

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

3 01-04-2015 Heard the learned counsel, Mr. Kaushal Kishore Mishra for the petitioners and the learned counsel Mr. S.K. Dvivedi appearing on behalf of the opposite parties.

This review application has been filed for review of the judgment dated 08.01.2015 passed by me in First Appeal No. 36 of 2013 whereby the First Appeal has been dismissed after hearing both the parties.

The learned counsel, Mr. Mishra for the petitioner submitted that although the plaintiff filed the suit taking the plea that the defendants have fraudulently obtained the sale deed with respect to the property, which was settled by the auction purchaser Sadhu Prasad Sah, no issue was framed by the trial court with respect to fraud. This Court also in the judgment, has not considered this question of fraud. According to the learned



counsel, the fraud vitiates the entire proceedings. Secondly, the learned counsel submitted that the appellate court has not examined the statements of any witnesses examined on behalf of the appellants in the impugned judgment and had the appellate court examined the evidences of the witnesses, the result would have been otherwise. Thirdly, the learned counsel submitted that the defendants have failed to prove the genuineness or otherwise of the sale deed because the burden was on the defendants to prove the genuineness of the sale deed and passing of consideration because the appellant has challenged the sale deeds alleging that the sale deeds are furji and fraudulent sale deeds and no consideration passed. Fourthly, the learned counsel submitted that at best, this is a case of remand but the appellate court has not properly considered the case of the parties and has decided the case finally. The learned counsel in support of his contention relied upon almost all the decisions rendered by this Court as well as by the Supreme Court on the question of review that is scope under Order 47, Rule 1 C.P.C.

On the other hand, the learned counsel Mr. Dvivedi appearing on behalf of the opposite parties submitted that none of the points raised by the petitioners is applicable in the present case and in fact, each and every point has been considered in the

judgment. The plaintiff's suit was dismissed on the ground that the plaintiff failed to prove settlement and the appeal has been dismissed, therefore, unless the plaintiff proved his case, the plaintiff is not entitled for the relief claimed.

Perused the judgment passed by me dated 08.01.2015 in First Appeal No. 36 of 2013. It appears that the documentary evidences including the plaintiff's evidence has also been considered by this Court. So far fraud is concerned, on the ground that the issue of fraud was not formulated by the trial court, the judgment cannot be reviewed. Likewise, the grounds that the defendants failed to prove passing of consideration or that the non-consideration of other evidences, in my opinion, is not a ground for review.

The Supreme Court in the case of **Kamlesh Verma v. Mayawati & Ors. reported in AIR 2013 SC 3301** has held as follows:

“The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is 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. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished



out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. 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 of CPC. In view jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.”

In view of the aforesaid settled proposition of law laid down by the Supreme Court, in my opinion, none of the grounds raised by the petitioners are grounds of review of the judgment. In my opinion, all the grounds raised by the petitioners are questions on merit which cannot be reopened at this stage and this Court is not exercising the jurisdiction either of appellate court or of revisional court.

In the result, I find no merit in this review application and it is dismissed.

(Mungeshwar Sahoo, J.)

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