

THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.273 of 2014

In

Civil Writ Jurisdiction Case No. 7153 of 2010

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1. Manju Devi W/o Sri Vijay Kumar Gosawami Resident of Village Daud Nagar, Ward No. 3, P.S. Daud Nagar, District Aurangabad.

.... Petitioner.

Versus

1. Sanjay Prasad Kasayankar S/o Shri Bhuneshwar Prasad Kasayankar Resident of Village / Mohalla Kasera Toli, Ward No. 10, P.S. Daud Nagar, District Aurangabad

..... Petitioner/Respondent Ist Set

2. The State of Bihar.

3. The Collector, Aurangabad.

4. The Sub Registrar, Sub Registry Office, Daud Nagar, District Aurangabad.

5. Ajay Goswami S/o Late Rajendra Gosawami

Resident of Village Daudnagar, Nagar Mohalla Nalbandh Tola, Ward No. 3, Pargana, Anchal and District Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nagendra Sharma, Adv.
Mr. Kritya Nand Jha, Adv.

For the private respondent/s : Mr. R. K. P. Singh
Mr. Tribhubhan Narayan

For the State : Mr. Pawan Kumar, AC to GA-9

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL ORDER

10 16-09-2015

This Civil Review Application has been filed on behalf of the petitioner, Manju Devi for review of the order dated 27-06-2014 passed in CWJC No. 7153 of 2010 along with CWJC No. 10057 of 2008 by this court, by which and whereunder, this court quashed the order dated 07-12-2006 passed in Registration Case No. 23 of 1999-00 as well as the order dated 03-05-2007 passed in Registration



Case No, 24 of 1999 and also the order dated 23-08-1999 passed by the Sub Registrar, Daudnagar, District-Aurangabad, directing the Sub Registrar, Daudnagar district-Darbhanga to register two sale deeds dated 23-12-1998, said to be executed by opposite party No. 5 in favour of opposite party No. 1 in accordance with law within a week from the date of receipt/production of copy of the said order.

2. In brief, the fact, which lies to file this review petition, is that opposite party No. 1 namely, Sanjay Prasad Kasyankar filed CWJC No. 10057 of 2008 against opposite party No. 5 and two others, praying therein for quashing the order dated 07-12-2006 and order dated 23-08-1999 passed by District Magistrate-cum-Collector, Aurangabad in Registration Appeal No. 23 of 1999-00 and by Sub Registrar in Case No. 03 of 1999 respectively and pleaded in the said writ petition that he agreed to purchase a piece of land of holding No. 745/36 situated in Ward No. 9 Mohalla-Bazar Road, Daudnagar from O.P. No, 5 namely, Ajay Goswami and paid the full consideration money to O.P. No, 5 and the O.P. No, 5 executed sale deed dated 23-12-1998 in his favour but when the aforesaid sale deed



was produced for registration before Sub Registrar, Daudnagar, the respondent No. 5 left the Sub Registrar office without admitting the execution and thereafter, he filed a petition u/S 36 of the Indian Registration Act and in response thereto, Sub Registrar issued notice to the O.P. No, 5 to admit or deny the execution but even then, O.P. No, 5 did not appear before the Sub Registrar, Daudnagar and Sub Registrar, Daudnagar refused to register the aforesaid sale deed, passing the order dated 23-08-1999 against which, he preferred Registration Appeal No. 23/99-00 u/S 73 of the Indian Registration Act but the aforesaid appeal was, too, dismissed on 07-12-2006 by the Collector, Aurangabad. However, in the meantime, the mother of opposite party No. 5 filed a complaint case, bearing Complaint Case No. 171 of 1999 against him for the offences punishable under Sections-420, 467, 468, 342 & 120B of the Indian Penal Code, which was pending before Chief Judicial Magistrate, Aurangabad.

3. Since the opposite party No. 1 had preferred two registration appeals against the order of Sub Registrar and Registration Appeal No. 23/99 was dismissed on 07-12-2006 and registration appeal No. 24/99 was dismissed on



03-05-2007 and the petitioner had already filed CWJC No. 10057 of 2008 against the order dated 07-12-2006 passed in Registration Appeal No. 23/99 and likewise, he filed CWJC No. 7153 of 2010 for quashing the order dated 03-05-2007 passed in Registration Appeal No. 24/99 and order of Sub Registrar passed on 23-08-1999 in Case No. 02/99 on the similar grounds, which were taken in CWJC No. 10057 of 2008. Both the above-said writ petitions i.e. CWJC No. 7153 of 2010 and CWJC No. 10057 of 2008 were taken together and were disposed off by common order dated 27-06-2014 by this court.

4. The present petitioner, being aggrieved by the impugned order dated 27-06-2014 by which, CWJC No. 7153 of 2010 and CWJC No. 10057 of 2008 were disposed off by this court, preferred the instant review petition on the grounds that petitioner was necessary party in both the above-said writ petitions but she was not made party to the aforesaid writ petitions and the opposite party No. 5 filed the aforesaid writ petitions, concealing important and material facts and thus, misled this court.

5. The case of petitioner is that one Kanti Kunwar w/o late Rajendra Goswami, who happened to be mother of



opposite party No. 5, executed sale deed in respect of old holding No. 743/New Holding No. 36 in favour of petitioner on 22-12-1998 and the aforesaid sale deed was produced before Sub Registrar, Daudnagar and after acceptance of execution of sale deed by aforesaid Kanti Kunwar, the above-said sale deed was registered on 24-12-1998 in accordance with rules and law. The opposite party No. 5 was made witness on the above-said sale deed. After registration of the sale deed, the petitioner got mutated her name in revenue records in respect of the transferred land and got sanctioned map for construction of her house on the above-said land but the opposite party No. 1 filed both the above-said writ petitions, concealing the above-said facts with mala fide intention without making the petitioner as party to the said writ petitions and got order in his favour misleading this court.

6. Learned counsel, appearing for petitioner submitted that opposite party No. 1 filed both the above-said writ petitions, concealing the relevant and material facts and had the opposite party No. 1 been pleaded real facts in the above-said writ petitions, this court would not have passed the impugned order because the lands, in



question had already been transferred and registered in favour of the petitioner and not only sale deed, executed by mother of opposite party No. 5 had already been registered in the name of petitioner but also mutation had been done in favour of the petitioner. It was further contended by learned counsel for the petitioner that it was duty of the opposite party No. 1 to bring the present status of land, in question to the notice of this court but opposite party No. 1 mala fidely and intentionally, suppressed the real facts as a result whereof, this court passed impugned order against which, this review petition has been filed.

7. It was further contended on behalf of the petitioner that no doubt, petitioner was not party to the writ petitions but only on the aforesaid technical ground, this review petition cannot be dismissed because this court, to prevent miscarriage of justice or to correct grave and palpable errors, can exercise its inherent power of review. It was also contended on behalf of the petitioner that it is true that two separate writ petitions were filed for quashing two separate orders, passed by the appellate authority and only one review petition has been filed but as a matter of fact, both writ petitions have been disposed off by this court by a



common order and that is the reason, only one review petition has been filed. It was further contended on behalf of petitioner that moreover, non-filing of two review petitions is only a procedural error and on the aforesaid technical ground, this review petition cannot be rejected. In support of his above-said contention, he referred a decision reported in **AIR 1979 SC 1047 (Aribam Tulesjwar Sharma Vs Aribam Pishak Sharma & Ors.)** in which, the Hon'ble Apex Court has held as follows: -

"It is true there is nothing in Art. 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person, seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of

errors committed by the Subordinate Court. AIR 1963 SC 1909, Disting”.

8. He also cited a decision reported in **AIR 1988 SC 702 (State of Kerala and another Vs. P.K. Syed Akbar Sahib)** in which, the Apex Court has held that review petition could not be dismissed on super technical considerations. He also referred a decision reported in **(2000) 6 SCC 224 (Lily Thomas and Others Vs Union of India and Others)** in which, it has been held by Hon'ble Apex Court that review may be called for where new and important matter has been discovered, which after exercise of due diligence was not within the knowledge of petitioner at the time of the passing of the judgment under review.

9. On the strength of aforesaid submissions as well as decisions, petitioner sought review of impugned order dated 27-06-2014.

10. On the other hand, learned counsel, appearing for opposite party No. 1 refuted the above-said submissions, arguing that opposite party No. 1 filed CWJC No. 10057 of 2008 and CWJC No. 7153 of 2010 only for quashing the orders, passed by appellate authority as well as Sub Registrar as the Sub Registrar had refused to register the sale deed on frivolous grounds and the



appellate authority kept the registration of the document pending in abeyance till disposal of criminal case, which was not in accordance with law and, therefore, the only question before this court was that as to whether the orders, passed by Sub Registrar as well as appellate authority were in accordance with law or not and that was the reason, there was no need to implead the petitioner of present review petition as respondent to the writ petitions. It was further contended that moreover, the opposite party No. 1 was not aware about the execution or registration of deed said to be executed by Kanti Kunwar in favour of petitioner of the present review petition. It was further contended by him that there is no apparent error on the face of record which requires to exercise the power of review vested in this court and, therefore, the review petition is not maintainable. It was also submitted on behalf of opposite party No. 1 that petitioner has no right to file review petitions as she was not party to the writ petitions and moreover, she has filed only one review petition whereas; she ought to have filed two separate review petition as the impugned order has been passed in two separate writ petitions. Learned counsel for opposite party

No. 1 also relied upon the decision of ***Lily Thomson & Ors. (supra)***.

11. It is an admitted position that opposite party No. 1 filed CWJC No. 10057 of 2008 and subsequently, filed CWJC No. 7153 of 2010 and in both the above-said writ petitions, petitioner of the present review petition was not made party. Furthermore, it would appear from both the above-said writ petitions that the opposite party No.1 had prayed before this court in both the above-said writ petitions for issuance of writ in the nature of certiorari or any other appropriate writ for quashing the orders passed by appellate authority in Registration Appeal No. 23 /99 and Registration Appeal No. 24/99-00 as well as order passed by Sub Registrar on 23-08-1999 in case No. 03/99.

12. Therefore, it is obvious that in both the above-said writ petitions, the only question was raised before this court as to whether the orders, passed by the appellate authority as well as Sub Registrar were in accordance with law or not and whether the aforesaid authorities has right to refuse the registration of sale deed or not.

13. It was an admitted position that opposite party No. 5 executed sale deed on 23-12-1998 in favour of



opposite party No. 1 in respect of one Dhur area of holding No. 743 and on the same say, the aforesaid sale deed was produced before the Sub Registrar, Daudnagar but at the time of acceptance of registration, the opposite party No. 5 made himself absent and thereafter, opposite party No. 1 filed a petition u/S 36 of the Registration Act, 1908 before the Sub Registrar, Daudnagar, who subsequently, issued notice to the opposite party No. 5 and having opined that the notice was duly served upon the opposite party No. 5, refused to register the document u/Ss 34, 35(3) of the Registration Act, 1908 vide order dated 23-12-1999, which was challenged by the opposite party No. 1 and before the appellate authority, opposite party No. 5 appeared and pleaded that his signature was taken on the deed while he was in intoxicated condition and as a matter of fact, no consideration money was paid to him and for which, he filed a criminal case against the opposite party No. 1 in the court of learned Chief Judicial Magistrate, Aurangabad. The appellate authority kept the registration of document in abeyance till disposal of aforesaid criminal case, passing the impugned order dated 0-12-2006 in Registration Appeal No, 23/99-00 and the same order was adopted by the

appellate authority in Registration Appeal No. 24/99-00 passing impugned order dated 03-05-2007.

14. No doubt, the claim of the review petitioner is that the mother of opposite party No. 5 had executed sale deed in her favour for the same land on 22-12-1998 and the opposite party No. 5 of the review petition, witnessed the execution of aforesaid sale deed and the aforesaid sale deed was produced before the Sub Registrar and subsequently, the aforesaid sale deed was registered on 24-12-1998 but in both the above-said writ petitions, the question regarding right and title of petitioner as well as opposite party No. 5 was not involved and the only question was involved in the above-said writ petition as to whether the registering authority rightly refused to register the sale deed, executed by opposite party No. 5 in favour of opposite party No. 1 in accordance with rule and law or not.

15. Section 35(3)(a)(b) prescribes the circumstances in which, registering authority may refuse to register a document. Section-35(3)(a) says that if, any person by whom, the document purports to be executed, denies its execution, the registering authority may refuse to register the documents. Section-35(3)(b) says that if, any



such person appears to the registering officer to be a minor, an idiot or a lunatic, the registering authority, in that circumstance, also may refuse to register the document and similarly, Section-35(3)(c) says that if any person by whom, the document purports to be executed, is dead and his representative or assigned denies its execution, the registering authority may refuse to register the document.

16. From bare perusal of the aforesaid provisions, it is apparently clear that the registering authority had no right to look into the right and title of the executant of the document and the registering authority can only refuse to register the document on the basis of grounds, given in the above-said provisions.

17. From perusal of the impugned order dated 27-06-2014, I find that the aforesaid impugned order was passed by this court within the premises of the aforesaid provisions, keeping in mind that the registering authority illegally, refused the registration of sale deed, said to be executed by opposite party No. 5 in favour of opposite party No. 1 and, accordingly, the registering authority violated the fundamental right of the opposite party No. 1.

18. Therefore, in my view, there is no apparent

error on the face of the record, which requires review of the impugned order.

19. No doubt, the opposite party No. 1 did not place the factum of execution and registration of sale deed of petitioner before this court in CWJC No. 7153 of 2010 as well as CWJC No. 10057 of 2008 but in my view, there was no need for the opposite party No. 1 to bring the aforesaid fact before this court as the opposite party No. 1 had only challenged the legality of orders, passed by registering as well as appellate authority and the opposite party No. 1 had not approached this court for deciding his right and title in respect of the lands, in question.

20. A question has been raised on behalf of opposite party No. 1 that the petitioner was not party to the writ petitions and, therefore, petitioner has no right to file review petition.

21. In my view, the learned counsel for the opposite party No. 1 rightly raised the aforesaid objection because the dispute raised in both the above-said writ petitions was between opposite party No. 1 and registering authority as well as opposite party No. 5 and the petitioner of the present review petition was not in picture. As I have already



stated that registering authority was not competent to decide the right and title of any party and at the time of registration of deed, said to be executed by opposite party No. 5 in favour of opposite party No. 1, the registering authority was not going to decide the right and title of opposite party No. 5 and the registering authority had to look only this fact as to whether under the provisions of Registration Act, 1908, the document produced before the registering authority was liable to be registered or not and, therefore, the opposite party No. 1 rightly left the petitioner of present review petition to implead as respondent in the both the above-said writ petitions. Therefore, since the review petitioner was not party to the writ petitions, she has no right to file present review petition.

22. On the basis of aforesaid discussions, I am of the opinion that this review petition and the petition filed u/S 5 of Limitation Act on behalf of the petitioner are liable to be dismissed.

23. Accordingly, the above-said petition stands dismissed. However, it is made clear that the observations/findings, given in this order shall not affect right and title of the petitioner in respect of the disputed

land/holding in future litigation and she may take legal recourse for redressal of her grievance before appropriate forum, if, she intends to do so.

(Hemant Kumar Srivastava, J)

A.K.V./-

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