

Shyama Dutt Jha, Son of Late Ambika Dutt Jha, R/o Village & P.O.-Sabour
in the District of Bhagalpur **---Plaintiff-Appellant-Petitioner.**

- 1.a. Mahamaya Devi Widow of Late Chandi Dutt Jha.
- b. Parmanand Jha.
- c. Satyanand Jha.
- d. Niranjana Kumar Jha.

Appearance :

For the Respondent/s : Mr.

Heard Mr Ashutosh Jha, the learned counsel

This civil revision application has been directed against the order dated 26.06.2010 passed by learned 2nd Additional District Judge, Bhagalpur in Miscellaneous Appeal No.55/02 affirming the order dated 04.10.2002 passed in T.S.No.106/01 by learned Munsif II, Bhagalpur whereby the review petition filed by the petitioner was rejected.

In order to appreciate the submissions on behalf of the petitioner on the maintainability as well as the merits of this revision application, it would be apposite to notice the undisputed facts apparent from the records including the two impugned orders

and also the submissions made by the learned counsel for the petitioner.

The T.S.No.295/88 was filed in the Court of learned Munsif II, Bhagalpur by the sole opposite party-Chandi Dutt Jha. In the said suit the present petitioner was impleaded as one of the defendants. This T.S.No.295/88 was decreed ex parte against the present petitioner by the judgment and decree dated 31.01.1989. The Execution Case No.09/2000 was, thereafter, filed by the plaintiff-decree holder of T.S.No.295/88. The petitioner came to know about the ex parte decree against him after filing of the execution case and then he filed T.S.No.106/01 for declaration of his title over the suit property after declaring the ex parte judgment and decree dated 31.01.1989 passed in T.S.No.295/88 as illegal, void and ineffective. The relief in the said suit was also prayed for stay of the proceeding of the Execution Case No.09/2000. This T.S.No.106/2001 was filed before the court of learned Munsif II, Bhagalpur.

By order dated 30.04.2002 the learned Munsif II, Bhagalpur accepted the objection by the office that the suit was beyond the territorial jurisdiction of the said court and directed for return of the plaint to the plaintiff for filing the same before the competent court having territorial jurisdiction over the suit

property. The plaintiff-petitioner filed a review petition on 10.06.2002 praying for the review of this order dated 30.04.2002.

This review application was dismissed by order dated 04.10.2002. The plaintiff- petitioner thereafter filed Misc.Appeal No.55/02 which was heard by the court of learned 2nd Additional District Judge, Bhagalpur. After hearing the parties the Misc.Appeal No.55/02 has been dismissed by order dated 26.06.2010.

In response to the query of the court regarding the maintainability of the Misc.Appeal No.55/02 against the order dated 04.10.2002 passed in T.S.No. 106/01 rejecting the petition for review of the earlier order dated 30.04.2002, the learned counsel has accepted that no appeal was provided in cases of dismissal of the review petition, and therefore, the Misc.Appeal No.55/02 was not maintainable. The learned counsel thereafter, however, has insisted that the present revision application has been filed assailing both the orders i.e. the order dated 04.10.2002 passed in T.S.No.106/01 dismissing the review application and the order dated 26.06.2010 passed in Misc.Appeal No.55/02 preferred against the said order. It has been propounded that in the fact of the case when the said miscellaneous appeal has been entertained and disposed of on merits, this Court should not shut out the

petitioner from assailing the original order itself at this stage. It has also been submitted that as this revision application has been pending since 2010, the same should not be dismissed as not maintainable as the petitioner, had acted bonafidely on the basis of the legal advice given to him.

In his submissions on merits of the case, the learned counsel has argued that the main relief sought in T.S.No.106/01 is against the ex parte decree passed by the court of learned Munsif II, Bhagalpur in T.S.No.295/88 , and therefore, the said court of Munsif II, Bhagalpur was competent to entertain the T.S.No.106/01. It has also been canvassed that the suit property in both the T.S.No. 295/88 and T.S.No.106/01 are same, and therefore, when T.S.No.295/88 has been entertained by the court of learned Munsif II, Bhagalpur, there was no reason to return the plaint of T.S.No.106/01 on the ground of lack of territorial jurisdiction. It has also been submitted that if the court of learned Munsif II, Bhagalpur has no territorial jurisdiction to entertain T.S.No.295/88, then the ex parte decree passed in the said suit was nullity and in this view of the matter also there was no impediment to entertain the later T.S.No.106/01. It has also been argued (as also stated in paragraph-10 of the revision application) that the review application which was filed by the petitioner was in fact for

review of the judgment and decree passed in T.S.No.295/88 on the ground that the court had no territorial jurisdiction to entertain the said suit.

Buttressing his submissions, the learned counsel has placed reliance on a bench decision of this Court in **Raj Kumar Madan Mohan Singh Vs Rukmini Devi, 1971 BLJR 1029** and the decision of the apex court in the case of **M/s. Ganesh Trading Company Vs Moji Ram, 1978 SC 484**. No other submission has been made on behalf of the petitioner.

After careful consideration of the matter in view of the submissions made on behalf of the petitioner, it is pellucid that an ex parte decree has been passed against the petitioner in T.S.No.295/88 by the court of learned Munsif II, Bhagalpur. The petitioner filed T.S.No.106/01 before the court of learned Munsif II, Bhagalpur seeking the declaration of his title over the suit property and also for declaration that the ex parte decree dated 31.01.1989 passed in T.S.No. 295/88 was illegal, void and ineffective. By order dated 30.04.2002 the learned court of Munsif II, Bhagalpur held that the court had no territorial jurisdiction to entertain the suit, and accordingly directed for return of the plaint to the plaintiff for presentation before the competent court having territorial jurisdiction over the suit property.



The learned counsel for the petitioner has accepted that the court of learned Munsif II, Bhagalpur had no territorial jurisdiction over the suit property of T.S.No. 106/01 and it was the court of learned Munsif I, Bhagalpur which had got such territorial jurisdiction. From the order dated 04.10.2002 passed by the court of learned Munsif II, Bhagalpur in T.S.No. 106/01 and the order dated 26.06.2010 passed by learned Additional District Judge II, Bhagalpur in Misc.Appeal No. 55/02 it is demonstrably clear that the petitioner filed the review petition on 10.06.2002 seeking the review of the order dated 30.04.2002 by which the plaint was directed to be returned. The statement made in paragraph-10 of the revision application and the submission on behalf of the petitioner on the same line that the review application was filed for review of the ex parte judgment and decree dated 31.01.1989 passed in T.S.No.295/88 is clearly wrong and misconceived. There is also no material on record to substantiate this statement and contradict the facts mentioned in the aforesaid two orders.

The next submission on behalf of the petitioner that the court of learned Munsif II, Bhagalpur which had earlier passed ex parte decree in T.S.No. 295/88 was alone competent to entertain the later T.S.No.106/01 filed by the petitioner

challenging the said ex parte decree, is again devoid of merit. As mentioned above, it is admitted position that the court of learned Munsif II, Bhagalpur had no territorial jurisdiction over the suit property subject matter of T.S.No.106/01 which was filed for declaration of title of the plaintiff with further declaration regarding the invalidity and ineffectiveness of the ex parte decree passed in T.S.No. 295/88. There is no provision of law nor any authority in support of the proposition has been brought to the notice of the court that a later suit seeking declaration against an ex parte decree passed in a previous suit must be filed in the same court which passed the said decree under challenge. To the contrary the absence of jurisdiction of the court which passed the decree under challenge can itself be set up as a ground for assailing the previous decree. The court having the territorial jurisdiction over the subject matter of the suit has also the jurisdiction to determine the validity of an ex parte decree under challenge passed by any other court. The submission on behalf of the petitioner that the learned court below should have reviewed its earlier order for return of the plaint of the suit wherein the ex parte decree passed by the said court itself was under challenge is clearly not sustainable. The prayer for review, in the facts and circumstances of the case, has rightly been rejected by the learned

court below.

The learned court in its order dated 04.10.2002 passed in T.S.No.106/01 has found that there was no illegality, irregularity or error apparent on the face of the record and no new material fact has been produced by the plaintiff(petitioner) warranting the review of the order dated 30.04.2002. The scope of the review jurisdiction of a court is now well settled by the apex court in the case of **Haryana State Industrial Development Corporation Limited Vs Mawasi, 2012 (7) SCC 200** and in the case of **Kamlesh Verma Vs Mayawati, AIR 2013 SC 3301** and it has been laid down that the review petition cannot be entertained as an appeal in disguise. Even earlier to that the apex court in the case of **Haridas Das Vs Smt Usha Rani Banik, AIR 2006 SC 1634** while delineating the parameters prescribed under Order 47 Rule 1 C.P.C. has observed that none of those parameters postulates a rehearing of dispute because a party has not highlighted all aspects of the case or would perhaps have argued them more forcefully or cited binding precedents and thereby enjoyed a favourable verdict. The decision by a bench of this Court in the case of **Raj Kumar Madan Mohan Singh (Supra)** is clearly distinguishable from the facts of this case as this Court in the said decision was considering the validity of the order passed



by a bench of the Court which was wholly without jurisdiction and in that circumstance it has been laid down that the litigants deserve to be protected against the default committed or negligence shown by the court or its officers in the discharge of their duties. The reliance placed by the learned counsel for the petitioner on the decision in the case of **M/S Ganesh Trading Company (Supra)** is also misplaced inasmuch as their Lordships in this case were considering the nature and scope of the amendment of pleadings as provided in Order 6 Rule 17 C.P.C. and in that context have observed that the rules of procedure are handmade of administration of justice.

The learned counsel for the petitioner has also submitted that the petitioner is running from the pillars to posts desperately for getting justice in face of the ex parte decree passed in T.S.No.295/88, and therefore, the liberal view in the matter should be taken. This Court is left unimpressed with this submission in view of the unexplained insistence of the petitioner for trial of his T.S.No.106/01 by a particular court even when he has been provided the remedy for presenting the plaint, which was directed to be returned to him, for presentation before the court of competent jurisdiction. There is no reason as to why the prayer of the petitioner for trial of his suit in a particular court be accepted



when admittedly the said court has no territorial jurisdiction over the subject matter of the suit. This Court is further also conscious that the prayer by the learned counsel for the petitioner for entertaining this revision application as against the order dated 04.10.2002 passed in T.S.No.106/01 is not tenable until the delay is condoned. However, in view of the fact that the petitioner on legal advise has preferred Miscellaneous Appeal No.55/02 against the said order and the said appeal was entertained and disposed of on merits, this Court, in order to give quietus to litigation and further to avoid unnecessary prolongation of litigation on technical ground, has allowed the learned counsel for the petitioner to make his submissions on merits assailing the order dated 04.10.2002 in T.S.No.106/01 itself. The fact also cannot be ignored that this revision application has been filed in the year 2010 and notice was issued to the opposite parties by order dated 25.03.2011 in the limitation matter. The opposite parties have not chosen to appear in spite of valid service of notice, and thereafter the delay in filing this revision application has been condoned.

For the aforesaid facts and reasons, this Court does not find any error of jurisdiction or material irregularity

committed by the learned court below in the order dated 04.10.2002 passed in T.S.No.106/01.

The revision application is, accordingly, dismissed.

(V. Nath, J)

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