

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.54 of 2014

In

SA 37 of 98

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Saryug Sah @ Sarju Sao

.... Petitioner/s

Versus

Gopal Sah

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dronacharya

For the Respondent/s : Mr. Kamla Prasad Roy

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

12 05-01-2015 **1.** Heard the learned counsel, Mr. Dronacharya, for the petitioner and the learned counsel, Mr. Kamla Prasad Roy for the opposite party.

2. This review application has been filed by the petitioners who were respondents in Second Appeal for review of the Judgment dated 31st July, 2013 passed by me in Second Appeal No.37 of 1998.

3. The aforesaid Second Appeal was admitted on 24.3.1998 and at the time of admission, two substantial questions

of law were formulated. After hearing both the parties, by terms of Judgment dated 31st July, 2013, the Second Appeal was allowed and the Judgment and Decree of the lower appellate Court is set aside and that of the trial Court was restored.

4. The learned counsel, Mr. Dronacharya, for the petitioner submitted that while allowing the Second Appeal, this Court did not consider the report of the pleader commissioner and the evidence of the pleader commissioners who was examined as P.W.8. The pleader Commissioner in the report has clearly stated that the plaintiff has got separate single storied building and the defendant has got separate double storied building and according to P.W.8, both the houses are separate and he found the house of the plaintiff in lesser area. The pleader commissioner further stated that if the fallow land is given in the share of the plaintiff then area of both the parties will be near about equal.

5. Secondly, the learned counsel submitted that this Court also did not consider the evidence of plaintiff P.W.9 who has stated that if a Rasta is given to the plaintiff by the side of the shop of Sarjug Sao, then there will be no dispute between the parties which clearly indicate that there had already been partition between the parties but without considering this evidence, this

Court has set aside the Judgment and Decree of the lower appellate Court.

6. On the other hand, the learned counsel appearing for the plaintiff respondent submitted that there is no apparent error on the face of the record and the two substantial questions of law formulated at the time of admissions were required to be answered by the Court while hearing the Second Appeal and the said substantial questions of law have been answered by the Judgment. Therefore, there is no merit in the review application.

7. Perused the Judgment passed by me on 31st July, 2013. From perusal of the Judgment, it appears that none of the grounds raised by the petitioner in this review application was argued by the respondents in Second Appeal nor there was any scope for the same. For the first time, in review application, these points are raised before this Court. Moreover, the two substantial questions of law formulated have been quoted in the Judgment and both the substantial questions of law formulated were considered by this Court on the basis of the submissions made by the parties.

8. The Hon'ble Supreme Court recently in the case of *Kamlesh Verma Vs. Mayawati AIR 2013 SC 3301* has considered the scope of review and held that **'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 error which has to be fished out and searched.'

9. In the present case as stated above the grounds raised by the petitioner were never raised at the time of Hearing of the Second Appeal and moreover the grounds relates to the appreciation of evidence in the Second Appeal. It is settled principle of law that so far second appeal is concerned, it is heard only on substantial question of law only. The grounds which are raised by the petitioners moreover relates to the question about the legality or otherwise of the Judgment passed by this Court, therefore, in review jurisdiction, this Court cannot say that the Judgment sought to be reviewed is bad or illegal in view of the non-consideration of some of the evidence.

10. In view of the settled proposition of law, in my opinion, this review application has got no merit and accordingly, it is dismissed.

(Mungeshwar Sahoo, J)

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