

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.31 of 2015

In

M.A. 372 of 2013

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Sanjeev Ranjan Gupta & Ors.

.... Petitioner/s

Versus

Bihar State Board of Religious Trust & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajani Kant Mishra

For the Respondent/s : Mr. Ganpati Trivedi

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

3 05-08-2015 Heard learned Senior Counsel Mr. S.S. Dwivedi for the

petitioners and learned Senior Counsel Mr. Ganpati Trivedi for the

Bihar State Board of Religious Trust and others.

2. This review application has been filed by the
petitioners for review of the order dated 23.12.2014 passed by this
Court in Miscellaneous Appeal No.372 of 2013.

3. It appears that the aforesaid miscellaneous appeal
was filed by the petitioners against the order dated 16.04.2013
passed by the District Judge, Nalanda at Bihar Sharif in
Miscellaneous Case No.27 of 2013 arising out of a proceeding
under Section 28(2)(h)(iii) of the Bihar Hindu Religious Trust Act,
1950. The said proceeding was filed by the petitioners against the
order dated 07.02.2008 passed by the then Administrator-cum-
Special Officer whereby the appellant no.1 of the miscellaneous

appeal being the petitioner herein was removed from the post of trustee of the Religious Trust. The miscellaneous appeal was heard and it was disposed of by terms of order dated 23.12.2014 dismissing the miscellaneous appeal.

4. Learned Senior Counsel Mr. S.S. Dwivedi for the petitioners submitted that while disposing of the miscellaneous appeal at paragraph 7 this Court has not considered the fact that 5 acres land of Khajuriabagh was not donated to the deity by anyone. The Religious Trust Board had not produced any document in support of the donation and in fact the earlier suit being Title Suit No.62 of 1954 the only question to be decided was as to whether the trust is a public trust or private trust. So far 5 acres land of Khajuriabagh is concerned, it was not the subject matter of the said suit and, therefore, any observation that might have been given either by the trial court or by the Division Bench of the High Court will not be binding on the vendor of the present petitioners as the vendor was also not party to the said suit. The vendor has sold the property in favour of the petitioners in the year 1983 and, therefore, this property whether is a part of trust or not is yet to be decided but the Religious Board issued the notice to file return with respect to this property. Had this been considered by this Court while disposing of the miscellaneous appeal, the

result would have been otherwise. At the time of hearing of this review application the learned Senior Counsel placed the plaint of Title Suit No.62 of 1954, the Division Bench judgment of the High Court passed in First Appeal No.695 of 1956 and also the plaint of Title Suit No.42 of 1992. On these grounds the learned Senior Counsel submitted that the order passed by this Court is liable to be reviewed and the miscellaneous appeal be admitted for hearing and in the meantime the operation of the order whereby the petitioners have been removed from the trusteeship be stayed.

5. Learned Senior Counsel for the petitioners relied upon the decisions of the Hon'ble Supreme Court reported in **(2011) 12 Supreme Court Cases 172 (Commissioner of Central Excise, Mumbai Vs. Bharat Bijlee Limited)** and **A.I.R. 2004 Supreme Court 1738 (M/s. Green View Tea and Industries Vs. Collector, Golaghat, Assam and another)** and further submitted that when the material evidences i.e. documents were available on record it was incumbent upon the High Court to consider while disposing of the miscellaneous appeal.

6. On the other hand, the learned Senior Counsel Mr. Ganpati Trivedi for the opposite parties submitted that there is categorical finding of this Court in the Division Bench decision given in First Appeal No.695 of 1956 to the effect that this 5 acres

land of Khajuriabagh is the trust property which was donated by the donor subsequent to the donation in the year 1905. The learned Senior Counsel further submitted that this decision of the High Court in the first appeal was never challenged by the vendor or the petitioners herein or even the parties in the said first appeal. The said suit being Title Suit No.62 of 1954 was filed by the father of the present petitioners for declaration that the trust is a private trust and the suit was dismissed, whereupon the first appeal was filed before the High Court and while deciding this question as to whether the trust is a private trust or public trust, the High Court considered the various evidences evidencing the donation of the properties by public and then has given categorical finding. Therefore, while deciding the miscellaneous appeal, which arises out of the order passed by the Administrator-cum-Special Officer by which the petitioners have been removed from the trusteeship, the validity or otherwise of the said Division Bench decision cannot be held to be either legal or illegal. The learned Senior Counsel placed the finding of the Division Bench in the first appeal and submitted that this is a clear finding of the Division Bench. When the present petitioners came to know about the aforesaid finding of the Division Bench, they have themselves filed Title Suit No.42 of 1992 wherein at paragraph 19 they have



specifically stated that any finding, observation, judgment or decree passed in Title Suit No.62 of 1954 has got no binding effect on Lilawati and the plaintiffs. According to the learned Senior Counsel, unless this declaration is given in the said suit, no finding can be arrived at in this miscellaneous appeal regarding the aforesaid finding of the first appellate court. This Court while disposing of the miscellaneous appeal at paragraph 7 has categorically stated that merely because the suit has been filed, the petitioners cannot be allowed to mismanage or not to furnish the account on the ground of pendency of this suit. In other words, the judgment of the Division Bench cannot be nullified.

7. Perused the order passed by this Court. Perused the Division Bench decision passed in First Appeal No.695 of 1956. From perusal of the judgment in the first appeal at page 14, which was annexed with the original miscellaneous appeal, it appears that the High Court clearly held that the evidence discussed so far established the following facts (1) --, (2) --, (3) --, (4) --, (5) “ The donation of an orchard measuring 5 acres and a piece of land measuring 0.24 acres have been made subsequent to the installation of the deity and the same are in possession of the deity for a long time”. This is not an observation of the Division Bench rather it is the categorical finding. It may be mentioned here that



this judgment is not under challenge before this Court and moreover this cannot be subject matter. The Hon'ble Supreme Court in the case of **Inderjit Singh Grewal Vs. State of Punjab reported in 2012 (1) B.L.J. 42 SC** has held that even if an order is void or voidable, same requires to be set aside by competent court. Even if a decree is void *ab initio*, declaration to that effect has to be obtained from competent court. Such declaration cannot be obtained in collateral proceedings. I may reiterate here that the miscellaneous appeal is not arising out of the aforesaid Title Suit No.62 of 1954. In fact this is a collateral proceeding and while deciding this collateral proceeding the judgment of the High Court cannot be held to be either void, voidable or not binding on the plaintiff, particularly when this is the relief which has been claimed by the plaintiffs, who are petitioners herein, in Title Suit No.42 of 1992. All these matters, no doubt, have not been elaborately discussed while disposing of the miscellaneous appeal but in paragraph 7 categorically these facts have been narrated.

8. So far two decisions relied upon by the learned Senior Counsel for the petitioners referred to above are concerned, those are not at all applicable in the present case because the first case i.e. (2011) 12 Supreme Court Cases 172 is concerned, it relates to the order passed by the Tribunal wherein the Tribunal



had not considered the evidences, which were on the record. So far the second decision i.e. A.I.R. 2004 Supreme Court 1738 is concerned, in that case it was a matter arising out of the Land Acquisition Act and the judgment of the Land Acquisition Judge was under challenge directly. All these matters, which have been argued before this Court, were argued also at the time of hearing of miscellaneous appeal in admission matter under Order 41 Rule 11 of the Code of Civil Procedure. It is settled principles of law that on merit review cannot be maintained. The Hon'ble Supreme Court in the case of **Kamlesh Verma Vs. Mayawati and others, A.I.R. 2013 Supreme Court 3301** has 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 an error which has to be fished out and searched. In the present case as has been discussed above and in view of the submission of the learned

Senior Counsel Mr. S.S. Dwivedi, it can be said that the petitioners are trying to say that this Court has in fact committed mistake by not considering the decisions of the first appeal and the pleading in Title Suit No.62 of 1954. Therefore, because of non-consideration of these materials the order passed by this Court dismissing the miscellaneous appeal is erroneous. In my opinion, this is not a ground for review of the order. If, in fact, it is an erroneous order, the petitioners should have approached the higher court.

9. In view of the above discussions, I find no merit in the review application. Accordingly, this civil review application is dismissed.

(Mungeshwar Sahoo, J)

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