

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.458 of 2012

IN

Miscellaneous Jurisdiction Case No. 1348 of 2007

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The Muzaffur Properites Pvt. Ltd. Through its Managing Director, Shri Amarnath Pandey son of Late Raghunath Pandey, resident of Mohalla Muzaffarpur Town, Police Station-Muzaffarpur (Town), District-Muzaffarpur.

.... Petitioner/s

Versus

1. Dr. Mrs. Sahiba Hasan, wife of Azhar Hasan, resident of Ramna Road, near Sapna Apartment, Naya Tola, Patna.
2. The State of Bihar through the Secretary, Minority Welfare, Government of Bihar, Patna.
3. The District Magistrate, Patna.
4. Superintendent of Police, Patna.
5. Secretary, Minority Welfare Department, Government of Bihar, Patna.
6. Chief Executive Officer, Bihar State (Shiya) Waqf Board, Abaden House, Frazer Road.
7. Syed Askari Hadi Ali Augustine Imam @ Tootoo Imam.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. SANJAY SINGH, Adv.
Mr. UMA KANT PRASAD, Adv.

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI)

Date: 10-11-2015

Respondent no.6 of MJC No.1348 of 2007 is seeking review of order dated 14.02.2012 passed in the said case.

I.A. No.8197 of 2012 has been filed to condone the delay in filing the petition on the grounds so enumerated therein and is accordingly allowed and delay condoned.

I.A. No.3443 of 2013 has been filed with a prayer to ignore the defect pointed by the office relating to Vakalatnama and is accordingly ignored.

I.A. No.5959 of 2014 has been filed on behalf of Mrs.

Tehmina Imam @ Tehmina Imam Punvani to allow her to intervene which for the present has not been taken into consideration because for the present we think it appropriate to hear the petitioner alone over the merit of review petition.

2. Learned counsel for the petitioner submitted that under order dated 14.02.2012 the court considered and disposed of MJC Nos.1348 of 2007, 3471 of 2009 and 1162 of 2007 holding CWJC No.15635 of 2009 and CWJC No.9130 of 2011 not at all interconnected with the aforesaid MJC numbers. It has further been submitted that under the order impugned the court had not taken notice of MJC Nos.3471 of 2009, 1162 of 2007 only dealt with MJC Nos.1348 of 2007 independently prohibiting the petitioner from exercising his legal right. The manner in which issue has been dealt with, happens to be contrary to law in the background of the fact that by such process the issue has been reopened which, has concluded in its finality at an earlier occasion. In the aforesaid background, it has also been submitted that while passing the order impugned, the court has crossed and violated the settled principle of law that while dealing with MJC, the courts are not at all competent enough to travel beyond the judgment under contempt.

3. In order to support its contention, the learned counsel for the petitioner submitted that there was one S. Hasan Imam, a well known legal luminary of Bihar who married twice. Bibi Muniba was the first wife while Bibi Nattie was the second one. From first wife



Sayed Hassan Imam was blessed with one son Sayed Mehdi Imam and two daughters Asma Zafar Imam and Mahmuda Sami while from second wife he was blessed with one son Saiyed Askari Hadi Ali Imam @ Toottoo Imam. During his lifetime, Sayed Hassan Imam created a waqf deed in nature of waqf Alal Aulad on 28.04.1931. Unfortunately, after death of Sayed Hassan Imam dispute arose over inheritance and accordingly, the matter was decided by way of arbitration and its award dated 02.05.1935 whereunder the property was divided in two parts. The ten annas share went to the descendants begotten from first wife while the six anna share to second wife and her son and the parties accepted and honoured the terms of settlement. It has further been submitted that there was negotiation of sale in between Toottoo Imam and the petitioner on being finalization of the terms and conditions, earnest money was paid and accordingly, an agreement was endorsed which was renewed time-to-time and lastly, when Toottoo Imam failed to execute the sale deed, a suit for specific performance of Contract Act was drawn against him by the petitioner. Toottoo Imam appeared and a compromise was effected in pursuance thereof, sale deed was executed and through the process of court, possession was given to the petitioner. Possession of petitioner over the lands in question has been acknowledged by a decree of a civil court then in that event restraining him from exercising legal right and further, for that purpose revisiting the merit of the case is illegal, arbitrary and without jurisdiction. Hence order needs review

and for that purpose instance petition has been filed.

4. After hearing the learned counsel for the petitioner we have gone through the order impugned along with the record. So far scope of review is concerned, it is basically applicable on three specified grounds.

“(i) discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the applicant’s knowledge or could not be produced by him at the time when the decree was passed or order was made;

(ii) mistake or error apparent on the face of the record; or

(iii) for any other sufficient reason.”

5. The scope of review has been taken into consideration by the Hon’ble Apex Court in *Usha Bharti v. State of U.P. reported in (2014) 7 SCC 663*.

“68. We have no hesitation in accepting the submission of Mr Bhushan that the High Court or this Court, in exercise of its powers of review can reopen the case and rehear the entire matter. But we must hasten to add that whilst exercising such power the court cannot be oblivious of the provisions contained in Order 47 Rule 1 CPC as well as the rules framed by the High Courts and this Court. The limits within which the courts can exercise the powers of review have been well settled in a catena of judgments. All the judgments have in fact been considered by the High Court in pp. 16 to 23. The High Court has also considered the judgment in *S. Nagaraj v. State of Karnataka 1993 Supp (4) SCC 595*, which reiterates the principle that: (SCC p. 619, para 19)

“19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally

and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice.”

69. These principles are far too well entrenched in the Indian jurisprudence, to warrant reiteration. However, for the sake of completion, we may notice that Mr Bhushan had relied upon *Board of Control for Cricket in India v. Netaji Cricket Club* (2005) 4 SCC 741 and *Green View Tea & Industries* (2004) 4 SCC 122. It would be useful to reiterate the following excerpts:

69.1. In *Board of Control for Cricket in India*(2005) 4 SCC 741, it was observed that: (SCC p. 765, para 90)

“90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words ‘sufficient reason’ in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine ‘*actus curiae neminem gravabit*’.”

6. After going through the order impugned, it is evident that while passing the same, every sort of precaution was taken into consideration with regard to limit of MJC petition. Petitioner’s presence by way of sale deed as well as by way of execution has not been disturbed. The only embargo so put with regard to any sort of construction and for that, relevant passage of Annexure-6 an order

dated 27.08.1993 passed in MJC No.770 of 1993, MJC No.1010 of 1993 and MJC No.974 of 1993 filed on behalf of petitioner is to be taken note of.

“The parties agree and this is also in accordance with our judgment, that the vacant portion of the premises, namely, lawns etc., shall be maintained in the same condition as they are today and on person shall be allowed to occupy or exercise any right of proprietorship over such land by raising any structure etc. This is because there is already an order of injunction by the civil court. However, the parties may act in future only in accordance with any judgment or order passed by a civil court of competent jurisdiction.”

7. We have quoted the operative portion of the award in order to appreciate the matter in issue raised under concerned MJC wherefrom it is evident that so far building portion is concerned, that has been divided in terms as mentioned therein while with regard to lawn it has been held “similar arrangement will be made in respect of the compound and the out offices.”

8. Petitioner has not pleaded that he is purchaser of any portion of the house rather he happens to be purchaser of the vacant area, lawn. We acknowledge right as a purchaser, he is to have the same right which his vendor has. There is no document on the record filed on behalf of petitioner that lawn has been partitioned amongst the parties as per their share and on account thereof, even if he has right to possess the property, the actual site will be only available in terms of allotment.

9. Not only this, the presence of civil suit including that of Partition Suit No.399 of 2009 has also been taken note of and in the aforesaid background the option has been kept open for the parties to get the identity of their portion of land duly ascertained at the spot in terms of allotment which has not yet been made.

10. Thus, taking into account the submission made on behalf of the petitioner inconsonance with the previous order (Annexure-6), it is evident that order impugned is not at all required to be reviewed nor we perceive that the order impugned has transgressed its limit, consequent thereupon the review petition is found devoid of merit and is accordingly rejected.

(Aditya Kumar Trivedi, J.)

I agree
V.N. Sinha, J.

(V.N. Sinha, J.)

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