

Party Name : PANNALAL GHOSH & 14 ORS Vs STATE OF TRIPURA & 34 ORS

THE HONBLE MR. JUSTICE S.C.DAS

Heard learned counsel Mr. D.K.Biswas for the petitioners and learned Addl. G.A., Mr. S. Chakraborty for the respondent Nos. 1 to 4.

Other respondents did not turn up.

The revisional application is filed challenging order dated 28.04.2010, passed in Misc.(R) 4 of 2009 by the learned District Judge, North Tripura, Kailashahar.

It is submitted by Mr. Biswas, learned counsel for the petitioners that the petitioners as plaintiffs instituted Title Suit No.14 of 1985 in the Court of learned Civil Judge, Sr. Division, Kailashahar claiming certain reliefs and the suit was decreed but the entire reliefs claimed by the plaintiffs were not included in the decree and therefore, having felt aggrieved, the plaintiffs preferred Title Appeal No.19 of 2008 and the appeal has been disposed of by the learned Addl. District Judge, North Tripura, Kailashahar by judgment dated 30.01.2009 and though the plaintiff-appellants, in the appeal, prayed for several reliefs, the appellate Court only granted the cost of the suit and did not say anything about the other reliefs claimed by the plaintiff-appellants and hence, the plaintiff-appellants preferred review case No. Misc. R (4) of 2009 but that review application has been summarily dismissed.

Learned Addl. G.A. Mr. Chakraborty submits that the order passed in Appeal by the learned Addl. District Judge shows that the cost of the suit was allowed and other reliefs were not allowed. It means the other reliefs were refused by the appellate Court. Learned counsel Mr. Biswas submits that there must be a clear finding about the reliefs claimed by the plaintiff-appellants in the review petition filed before the District Judge.

In the review petition the plaintiff-petitioners made the following prayer:-

"In these circumstances it is humbly prayed that your honour would be pleased to admit this review prayer, allow it after hearing the parties, modify the said judgment and decree dated 30.01.2009 granting aforesaid redresses upon 'interest' and 'solatium' as noted above."

In the memo of appeal of T.A. 19/2008 the plaintiff-appellants prayed for the following reliefs:-

"In the circumstances it is humbly prayed that your honour would be pleased to -

- (i) admit this appeal and call for the relevant records from the learned trial Court below;*
- (ii) notify the parties and hear them;*
- (iii) allow this appeal and grant and pass further decree in the original suit awarding full cost of litigation throughout and also the interest upon the decretal amount and grant all other reliefs as per plaint prayers."*

Records in the hand of learned counsel of both sides, produced before the Court. On perusal of the judgment and decree passed in the Title Suit, I find that the learned trial Judge decreed the suit in favour of the plaintiffs i.e. the petitioners herein with the following words:-

"Hence, the suit is decreed in favour of the plaintiffs on contest without cost and the plaintiffs are entitled to get the award money of Rs.1,27,086.82 which the defendant Nos. 1 to 5 are to call back and to pay to the plaintiffs."

In the appellate Court's judgment, I find that the appeal was allowed and the cost of the suit throughout was decreed in favour of the plaintiff-petitioners. The reliefs claimed by the plaintiff-petitioners in the review application is not consistent with the reliefs claimed by the plaintiff-petitioners in the memorandum of appeal. The learned District Judge has held that the review petition for solatium and interest cannot be granted by the appellate Court since such power cannot be exercised by the appellate Court.

After hearing learned counsel of both side, it is understood that an award was passed for acquisition of certain land belonged to the plaintiff-petitioners but the awarded amount was paid to somebody else who were not entitled to the amount and they were arrayed as defendants in the suit. The plaintiffs challenged that payment order made by the L.A. Collector and the Civil Court found that the order made by the L.A. Collector in respect of payment to the 3rd party was not correct and therefore, the Civil Court directed the State-respondents i.e. the defendant Nos. 1 to 5 to call back the payment and to make it to the plaintiff-petitioners. The award must include the entire award including solatium and interest on the awarded amount and other benefits as permitted by law. So, once the suit has been decreed in favour of the plaintiffs and the defendant Nos. 1 to 5 has been directed to call back the payment made, the entire amount shall be payable to the plaintiffs.

Therefore, I find nothing wrong in the order passed by the learned District Judge in the review application that there was nothing to decide by the District Judge in respect of solatium and interest etc.

The appeal was decided according to the prayer made by the plaintiff-appellants and hence, the present revisional application against the review order passed by the learned District Judge is found to be devoid of any merit and accordingly stands dismissed.

Send back the L. C. records along with a copy of this order.