

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Review Application No.56-C of 2013 (O & M)

In Regular Second Appeal No.4397 of 2002

Date of Decision: *December 22, 2015*

Bhupinder Singh & others

..... APPLICANT - APPELLANTS

VERSUS

Harjit Singh & others

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

. . .

PRESENT: - Mr. S.C. Arora, Advocate, for the applicant –
 appellants.

 Mr. Naresh Jain, Advocate, for respondent
 No.1.

. . .

Jaspal Singh, J

CM No.4273-C of 2015

 Since judgment and decree dated March 25, 1995,

the copy of which is sought to be placed on record, is already on

the lower court's record, no further action is required on the application and the same stands disposed of accordingly.

Review Application No.56-C of 2013

This order shall dispose of an application moved by the applicants – appellants under Order Section 114 read with order 47 CPC seeking review of judgment dated July 11, 2013 passed by this Court in Regular Second Appeal No.4397 of 2002, captioned as “Bhupinder Singh & others vs. Harjit Singh & others”.

Contention of learned counsel for the applicants – appellants is that Plaintiff – respondent No.1 filed a suit against defendants – appellants seeking declaration to the effect that Civil Court decree dated December 8, 1994 passed by the Additional Senior Sub Judge, Gidderbaha in suit No.548-1 of September 5, 1994 titled “Bhupinder Singh & others vs. Bachittar Singh” is null and void. The trial court dismissed the suit vide judgment dated January 4, 1997 whereas the first appellate court accepted the appeal and set aside the impugned judgment & decree vide judgment dated August 16, 2002.

Aggrieved against the said judgment and decree, applicant – appellants preferred Regular Second Appeal

No.4397 of 2002 which was dismissed by this Court vide judgment dated July 11, 2013, review of which has been sought.

Learned counsel for the applicants – appellants further contends that the respondents had misled this Court to disbelieve the evidence available on file in the manner that a family partition took place amongst the parties to the suit on which the plaintiff took his share of land measuring 6 kanal 10 marlas from defendant No.1 and separated from the family. On this score, plaintiff is estopped from challenging the decree.

It has further been contended by learned counsel that there was a specific stand that earlier plaintiff – Harjit Singh filed Civil Suit No.447 dated October 4, 1993 against Bachittar Singh seeking declaration that he is owner in possession of land measuring 74 kanals including the land in dispute but that suit was dismissed on merits vide judgment dated March 25, 1995 passed by the Additional Senior Sub Judge, Gidderbaha. The said judgment and decree has become final. Instead of filing an appeal against the said judgment and decree, Harjit Singh filed another suit which ultimately culminated by way of dismissal of Regular Second Appeal No.4397 of 2002. Infact, the second suit was barred by doctrine of *resjudicata* as the parties as well as the property in dispute

were the same. Copy of judgment Ex.D-1 was produced in evidence before the Additional Senior Sub Judge, Gidderbaha but the same was not taken note of by both the courts below. Similarly, that point was also could not be raised during the course of arguments in Regular Second Appeal which resulted into mis-carriage of justice. It being a legal plea can be taken by the concerned party at any stage. On this score alone, the impugned judgment deserves to be modified by way of acceptance of the application for review.

On the other hand, learned counsel for respondent No.1, Mr. Naresh Jain, Advocate, has ebulliently argued that review application is not legally maintainable; firstly on the ground that Mr. S.C. Arora, Advocate, was not the arguing counsel; and secondly, no such plea was ever raised at any point of time till disposal of the Regular Second Appeal by this Court. Moreover, under Order 47 Rule 1 CPC, review is only maintainable where; (i) there is a mistake or error apparent on the face of record; (ii) discovery of new and important matter or evidence which, after exercise of due diligence was not within the knowledge of the applicant or could not be produced by him; or (iii) any other sufficient reason.

Learned counsel for the respondent further contended that review of proceedings cannot be equated with original hearing of the case and review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error. In the case in hand, since there was no plea of *resjudicata* taken by the applicants – appellants, same cannot be taken at this stage that too, in a review application. He, accordingly, prayed for dismissal of the application.

After bestowing due consideration to the rival submissions made by learned counsel for the parties and going through relevant law on the point, this Court is of the considered view that instant application is without any merits and is not legally maintainable.

The main plea of the applicants – appellants seeking review of judgment dated July 11, 2013 is that the suit is barred by principle of *resjudicata* in view of judgment dated March 25, 1995 passed in Civil Suit No.447 of October 4, 1997 but a close scrutiny of the record transpires that though this document was placed on record before learned lower court as Ex.D-1 but to the utter surprise, neither there is any pleading with regard to the applicability of principle of *resjudicata* nor

any such argument was put-forth before lower court. Similar is the situation before learned appellate court. Not only this, even during the course of arguments before this Court in Regular Second Appeal No.4397 of 2002, no such plea was ever taken. So, this Court is of the view that no such plea is entertainable in a review application to modify judgment dated July 11, 2013 rendered by this Court.

As far as other plea of family settlement etc. is concerned, same is also without any substance. The ground on which review has been sought by the applicants – appellants can neither be termed to be a mistake or error apparent on the face of record nor there is any discovery of new important matter or evidence which after exercise of due diligence was not within the knowledge of the applicants. It is also well settled that review proceedings have to be strictly confined to the ambit and scope of order 47 Rule 1 CPC and in exercise of jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be re-heard and corrected. A review application has a limited purpose and cannot be allowed to be an appeal in disguise.

It is also equally settled that review application can be filed by the same counsel who has argued the case in

which the judgment was passed, the review of which has been sought. But, in the case in hand, Mr. Kuldeep Sanwal, Advocate, was present who addressed the arguments, though, Mr. S.C. Arora, Advoate, was also one of the counsels for the appellants. On this score also, review application is not sustainable which has been filed through another counsel.

Taking the case of the applicants – appellants from any of the angles, this Court does not find any merit in the review application. As such, review application is dismissed.

December 22, 2015
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(Jaspal Singh)
Judge