

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.343 of 2014

In
SA 284 of 2012

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Mira Choudhary

.... Petitioner/s

Versus

Laxmi Kant Mishra & Anr.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravi Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 14-09-2016 Heard learned Senior counsel, Mr. K.N. Chaubey,

appearing for the petitioner and learned counsel, Dr. Manoj

Kumar, appearing for the opposite parties.

2. This review application has been filed by the

plaintiff-appellant-petitioner against the order dated 13.09.2013

passed by this Court in Second Appeal No. 284 of 2012, whereby

the second appeal was dismissed under Order 41 Rule 11 C.P.C.

recording finding that the *ex-parte* order passed by the competent

court of jurisdiction is not challenged by the plaintiff and unless it

is set aside, the plaintiff cannot be entitled for any declaration of

his title and that admittedly no such proceeding or suit has been

instituted by the plaintiff.

3. Learned Senior counsel, Mr. K.N. Chaubey, for the

petitioner submitted that the plaintiff filed petition for special



leave to appeal before the Supreme Court, which has been annexed with this review application, wherein the Supreme Court has held that if this is the error apparent on the face of the record, the petitioner may file the review application and, therefore, this review application has been filed. According to learned Senior counsel, in fact, in this suit, relief No.B has been claimed by the plaintiff for declaring the *ex-parte* decree passed in T.S. No. 72 of 1994 as illegal, void, nonest, without jurisdiction and not binding on the plaintiff. Since it was second appeal and pleadings were not annexed with the memo of second appeal, this factual aspect could not be pointed out at the time of hearing of the second appeal under Order 41 Rule 11 C.P.C.

4. Learned counsel, Dr. Manoj Kumar for the opposite parties, on the other hand, vehemently opposed and submitted that this review application is not maintainable because everything has been considered by this Court and thereafter the appellate court's judgment and decree has been confirmed.

5. At the time of hearing of this review application, copy of the plaint was produced before this Court. From perusal of the plaint, it appears that at relief No. B, the plaintiff-petitioner has specifically sought for declaration about the earlier judgment and decree. Learned counsel for the opposite parties is not in a position

to dispute this fact. Therefore, in my opinion, there is error apparent on the face of the order dated 13.09.2013 passed by this Court in Second Appeal No. 284 of 2012. Therefore, this civil review application is allowed and the order dated 13.09.2013 is, hereby, set aside. The Second Appeal No. 284 of 2012 is restored to its original file.

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(Mungeshwar Sahoo, J)