

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.16 of 2015

In
S.A. 23 of 1996

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Parmanand Thakur

.... .. Plaintiff-Petitioner

Versus

The State of Bihar & Ors

.... .. Defendants-Opposite parties

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. ORDER

13 05-10-2016

I have heard learned Senior Counsel Mr. S.S. Dvivedi

on behalf of the petitioner, Mr. Pandit Jee Pandey on behalf of
opposite party no.3 and learned counsel Mr. Anwar Karim, A.C. to
G.P.10 for the State.

2. The plaintiff-appellant-appellant-petitioner has filed
this review application for review of the judgment passed by this
Court in Second Appeal No.23 of 1996 dated 19.10.2012.

3. The petitioner had filed Title Suit No.249 of 1986 for
declaration of title and confirmation of possession and in the
alternative for recovery of possession and also for declaration that
the order passed by defendant 2nd set i.e. State authorities is illegal.
The suit was dismissed.

4. After dismissal of the suit the plaintiff filed Title
Appeal No.68 of 1993. Title Appeal was dismissed by judgment



and decree dated 04.12.1995. Against the judgment and decree the petitioner filed Second Appeal No.23 of 1996. The Second Appeal was admitted and two substantial questions of law were formulated. Ultimately after hearing the parties by judgment dated 19.10.2012 Second Appeal was dismissed by this Court. Against the said dismissal judgment, the petitioner filed Petition for Special Leave to Appeal (Civil) No.8584 of 2013. The Supreme Court by order dated 01.03.2013 dismissed the S.L.P. holding that there is no merit. Thereafter this present review application has been filed.

5. The learned Senior Counsel Mr. S.S. Dvivedi submitted that *gairmajarua* land was settled in favour of the petitioner by S.D.O. but subsequently without initiating any proceeding the Collector by order dated 20.08.1986 cancelled the settlement on the ground that S.D.O. is not competent to make settlement to a military personnel. At the time of hearing of the Second Appeal the question of law that the order is liable to be set aside because of violation of natural justice could not be pointed out but since it is evident from the order sheet itself the court can consider the same. Because without initiating any proceeding the settlement has been cancelled by Collector on this score alone, the same is liable to be set aside. The order of cancellation is Ext.D in

the suit. On this question of law the learned Senior Counsel relied upon the decision of the Supreme Court **(2011) 6 Supreme Court Cases 529 and (2011) 8 Supreme Court Cases 679**. On this ground it is submitted that the judgment passed by this court is liable to be reviewed.

6. On the other hand, the learned counsel for the opposite parties submitted that new point is being raised without there being any pleading. None of the decisions relied upon by the petitioner are applicable in the present case.

7. From perusal of the judgment sought to be reviewed, it appears that two substantial questions of law were formulated on 18.03.1997 which are not related to the point, which is being raised in this review application.

8. From perusal of paragraph 7 two other substantial questions of law were sought to be formulated at the time of argument of the Second Appeal. The submissions on these points were noted at length in paragraph 7 and 8. From perusal of the last portion of paragraph 8, it appears that the submission was made that prior to cancellation of the settlement no notice was given to the present plaintiff. This court considering all these arguments and submissions at paragraph 20 recorded clear finding that all these questions formulated and sought to be formulated are not at

all substantial questions of law involved for decision in this Second Appeal.

9. In this review application again the question that proceeding was not initiated or that notice was not served is being raised. Therefore, the question which is being argued may be a pure question of fact but that cannot be said to be even question of law what to speak of substantial questions of law. Since there was no pleading regarding initiation of proceeding or that the cancellation order is liable to be set aside on the ground of violation of natural justice i.e. no opportunity of hearing was granted, there was no defence on this point nor there was any issue framed nor this question was decided by the trial court or by the lower appellate court. Before the second appellate court also this was not raised. Moreover since this question is a pure question of fact, it could not have been raised in Second Appeal. If it could not have been raised, how this can be a ground for review of the judgment. In no case, it can be said to be an error apparent on the face of the record. So far the decisions relied upon by the petitioner are concerned there is no dispute about the principle but those are not applicable in the present facts and circumstances of this case.

10. Now let us consider in the other way. The point



raised is no proceeding was initiated nor notice was served. Had notice been issued after initiation of the proceeding, the petitioner could have satisfied the Collector that he had no authority to cancel the settlement or that the order is illegal. The petitioner himself has filed the suit and in this suit the petitioner tested the order of cancellation and its legality or otherwise and competency or otherwise of the Collector in passing the order. Upto the Supreme Court the order has been confirmed. Now, therefore, the plaintiff got the opportunity to satisfy the trial court, appellate court and second appellate court and even the Supreme Court but he failed. In other words, the cancellation order has been held to be valid order. The question is whether only on the ground that no notice was served the valid order will be set aside that too in review application. What defence could have been taken by the petitioner has been taken in plaint but he failed to establish his case. Now, therefore, what will happen if order is set aside. Whether the plaintiff's title will be declared on the ground that the settlement has been made by S.D.O. which is correct. In my opinion, this cannot be done in any manner.

11. In view of my above discussion I find that the points raised are not at all error apparent on the face of the record. In fact neither there is pleading nor there is evidence nor the points

raised were argued before the courts nor the same have been dealt with in any judgment.

12. Thus, this civil review application has got no merit and, accordingly, it is dismissed.

(Mungeshwar Sahoo, J)

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