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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.183 of 2014
IN
SA 21 of 2012

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1(a) Anil Kumar Sinha
(b) Shailendra Kumar Sinha,
Both Sons of Bisheshwar Prasad
1(c) Shanti Devi (Wife)
1(d) Kumari Anjula Sinha
1(e)Kumar Sujata Sinha
Both daughters of Bisheshwar Prasad
Resident of Village - Noawam, P.s.- Asthama, District - Nalanda
2. Suresh Pd. Singh Son of Late Faro Mahto Resident of Village - Noawam, P.s.- Asthama, District - Nalanda

.... Petitioner/s

Versus

1. Umesh Prasad AND Ors Son of Mathura Mahto @ Mathura Prasad
2. Santosh Kumar Son f Umesh Prasad
3. Mallu Kumar Son of Umesh Prasad Resident of Village - Noawam, P.s.- Asthama, District - Nalanda

……Plaintiffs/Appellants/Respondent/Opp Parties. Party 1st Set.

4. Smt. Praja Devi Wife of Umesh Prasad Daughter of Raghunandan Mahto, Resident of Village - Lodipur, Mauza,- Bilashpur, P.S.- Manpur, District - Nalanda

....Defendant/Respondent….Respondent Opposite Party
Respondent 2nd Set…..Opposite Party

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Appearance :
For the Petitioner/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 22-06-2016

Heard Mr. Sunil Kumar, learned counsel appearing for the review-petitioners and Mr. T.N. Maitin, learned senior counsel for the opposite parties.

2. This review application has been filed praying for review of the judgment and order dated 25.04.2014 passed in

S.A. No. 21 of 2012 dismissing the appeal at the stage of hearing under Order 41 Rule 11 C.P.C after holding that no substantial question of law arose for consideration in the appeal.

3. Learned counsel for the review-petitioners has submitted that the provisions of Mental Health Act 1987 have not been considered by the appellate court below as well as this Court and therefore the judgment and order dismissing the second appeal require reconsideration. It has been propounded that the gift deed executed in favour of the defendant no. 1 was challenged basically on the ground that Plaintiff No. 2 (donor) was a lunatic and therefore the said gift deed was invalid transaction but the appellate court below as well as this Court have failed to take into notice the provision of Section 50 of the Mental Health Act 1987 which requires a Court to hold an inquisition into the mental condition of a mentally ill person possessing property and for appointment of guardian and manager to take care of the person and for the management of his property. It has been propounded that as no such step has been taken by the courts below or by this Court, the judgment

and order under review require to be recalled and the second appeal to be admitted for hearing on this substantial question of law.

4. The learned senior counsel appearing for the opposite parties however has submitted that the present review-petitioners are only some of the transferees of the part of the suit property subject matter of the gift deed in question from the Defendant No. 1(donee) who did not chose to challenge the judgment and decree passed by the appellate court below. It has been further submitted that all the persons who were parties in the suit, the appeal thereafter and in the second appeal have not been impleaded in the present review application and therefore also the present review application is not maintainable. It has been next contended that the issue regarding the applicability of the Mental Health Act 1987 was never raised either in the suit or in appeal in the court below or even before this Court during the course of hearing of the second appeal. It has been submitted that the prayer for review on entirely new ground cannot be entertained. It has also been contended that the provisions of Mental Health Act 1987 are not applicable in the

facts and circumstances of the case as the Plaintiff No. 2 cannot be said to be mentally ill person as defined in the said Act and even according to the case of the plaintiffs, the Plaintiff No. 2 suffered from mental retardation disorder (Senile Dementia) which got aggravated due to the death of his married daughter in a fire accident. It has therefore, been submitted that the present review application has got no merit and is fit to be dismissed.

5. After considering the submissions and the materials on record, it is manifest that the issue pertaining to the applicability of the provisions of the Mental Health Act 1987 was never raised by the appellants either in the suit or in appeal in the court below or before this Court in the second appeal. Even otherwise also Section 50 of the said Act on which strong reliance has been placed on behalf of the review petitioners, also requires an application before the Court for holding inquisition into the mental condition of a mentally ill person as defined in the said Act. The review-petitioners had never made such prayer before the court nor had filed such application. It is also not the case of the review-petitioners that any such

submission was made during the course of hearing of the second appeal.

6. It is well settled that a prayer for review can be allowed only when the error(s) in the judgment under review are self evident or patently apparent. The review jurisdiction cannot be invoked for rehearing of the dispute on an entirely new fact which was never pleaded nor placed before the court for consideration. Moreover all the persons who were parties in the second appeal have also not been impleaded as parties in this review application and no reason/explanation has been assigned in this review petition.

7. For the aforesaid reasons and discussions, this Court does not find any merit in this review application, which is accordingly, dismissed.

(V. Nath, J)

Ranjan/-

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