

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.383 of 2013

In
SA 159 of 2009

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Sushil Jha @ Bodhu Jha

.... Petitioner/s

Versus

Jwalamukhi Devi & Ors.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar Mishra

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

13 09-11-2016 Heard learned counsel for the petitioner and learned
counsel for the opposite parties.

2. This review application has been filed by the
appellant-petitioner for reviewing the judgment passed by this
Court dated 02.07.2013 in Second Appeal No.159 of 2009
whereby the second appeal was dismissed at the stage of
admission itself recording finding that no substantial question of
law is involved in the appeal.

3. It appears that the plaintiff-opposite party filed the
suit for declaration of title and recovery of possession and further
for declaration that the sale deed dated 11.04.1997 executed by
defendant nos.1 to 3 in favour of defendant no.7-petitioner is
forged, fabricated, without consideration and not binding on the
plaintiff and that the property belonged to the plaintiff.

4. The defendants' case is that Fauzdar Jha and Chulhai Jha both jointly purchased two plots and heirs of Fauzdar Jha sold two decimals of land to defendant no.7-petitioner. Fauzdar Jha had half share in two purchased property i.e. plot no.1489 and plot no.1490 measuring four decimals in total.

5. The parties produced their evidences. The plaintiff's case is that in partition between Fauzdar Jha and Chulhai Jha the suit property sold by Fauzdar Jha was allotted to the plaintiff and Fauzdar Jha was allotted only seven decimals of land because it was homestead land with a house. Both the courts below concurrently recorded finding that the suit property which was sold by Fauzdar Jha in favour of defendant no.7 was allotted in favour of Chulhai Jha in partition. Fauzdar Jha was allotted only seven decimals of land out of the property purchased jointly. This Court in second appeal, therefore, held that both the courts below concurrently recorded finding that the suit property was allotted in favour of Chulhai Jha in partition and dismissed the second appeal.

6. Learned counsel for the petitioner submitted that in fact both the courts below have not considered the entire evidence and did not consider the fact that in both the plots which were jointly purchased by the parties i.e. Chulhai Jha and Fauzdar Jha

no share was given to the ancestor of the vendor of the defendant no.7-petitioner. The learned counsel further submitted that by oral partition the right of Fauzdar Jha could not have been taken away. The learned counsel submitted that this aspect of the matter was not considered by this Court at the time of hearing of the second appeal.

7. On the other hand, learned counsel for the opposite parties submitted that these questions which are being raised by the petitioner herein were never raised before this Court at the time of hearing of the second appeal.

8. Perused the order dated 02.07.2013 passed by this Court in Second Appeal No.159 of 2009.

9. Perused the memo of appeal of the Second Appeal also.

10. It appears that these grounds which are being raised now in review were never raised before the Court. Therefore, there is no question of any error apparent on the face of the record arises. So far non-consideration of evidence is concerned, from perusal of the order at paragraph 12 it appears that it was found by this court that the lower appellate court has considered each and every witness examined on behalf of the plaintiff as well as the defendant. Moreover, non-consideration of some of the evidences

by the lower appellate court is not a substantial question of law. The only question to be decided is whether on the basis of the evidences considered by the lower appellate court the finding could have been recorded or not.

11. So far submission of learned counsel regarding oral partition is concerned, there is no provision in Hindu Law or any law that partition cannot be effected by oral agreement between the parties. On the basis of oral evidences the courts below have concurrently recorded finding that the suit properties were allotted in favour of Chulhai Jha and not in favour of Fauzdar Jha. So far submission of learned counsel that seven decimals of land allotted in favour of Fauzdar Jha is of different plot is concerned, it may be mentioned here that while partition is effected the only equal share is to be given to the parties considering the principles of partition and valuation of the property. It is not necessary that on each and every plot each party should be given equal share. Moreover both the courts below have concurrently found that the suit properties were allotted in favour of Chulhai Jha in second appeal, that concurrent finding of fact could not have been interfered with. Further all these grounds which are being raised by the petitioner were not substantial questions of law raised in the second appeal and, therefore, in review jurisdiction this Court for the purpose of

reviewing the judgment passed by this court cannot allow to raise further substantial question of law.

12. Thus, I find no error apparent on the face of the record and thus, this civil review application is dismissed.

(Mungeshwar Sahoo, J)

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