

SA 180 of 1974

.... Petitioner/s

Jagarnath Sah & Ors.

.... Respondent/s

For the Petitioner.

Mr. Sidharath Ranjan Advocate
Mr. Prithish Kumar Lal, Advocate

For the respondents

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Mr. Udit Narayan Singh, Advocate
Mr. Ashok Kumar, Advocate.

CAV ORDER

“Learned counsel for the petitioners submitted that due to oversight the present petitioners, who were appellants before the High Court could not point out that Bihar Tenancy Act, 1885 was put in the 9th Schedule of the Constitution of India on 2.4.1991. It is urged by him that had this aspect

been highlighted, the learned Single Judge could have been in a position to appreciate the same and arrive at a difference conclusion.'

Be that as it may, without expressing any opinion, we grant liberty to the petitioners to file an application for review in this regard within a period of six weeks hence. If such an application for review is filed, the same shall be addressed to on its own merits by the High Court.

The Special Leave Petition is accordingly disposed of."

3. In view of this liberty, this Review application has been filed. The learned counsel for the petitioner submitted that in the Judgment sought to be reviewed, this Court relied upon Full Bench decision in the case of *Bhageran Thakur Vs. Kewal Singh 1969 PLJR 1930* and held that 'the provision as contained in Section 49 (c) of Bihar Tenancy Act has been struck down. ON this ground, the bar created under Section 49 (C) of Bihar Tenancy Act was not considered and the sale deed of the plaintiff of the year 1959 has been held to be valid sale deed. According to the learned counsel, the Bihar Tenancy Act, 1885 was put in the Ninth Schedule of the Constitution of India on 2.4.1991. Therefore, in view of Article 31 (B) of the Constitution of India, the provision of the Act specified in Ninth Schedule shall not be deemed to be void or ever to have become void on the ground that any Judgment, decree or order to the contrary has been passed by any

Court. If there is clear bar according to Section 49 (C) of the Bihar Tenancy Act, no transfer could have been made in favour of the plaintiff and transfer, if any, made will be a void transaction and on the basis of the same, no title will pass. This aspect of the matter could not be argued or placed before this Court at the time of hearing of the Second Appeal.

4. On the other hand, the learned counsel for the opposite party submitted that the transfer has been made in the year 1959 and the Bihar Tenancy Act has been put in the Ninth Schedule on 2.4.1991, therefore, the sale deed will never be void sale deed and the right which the plaintiff acquired by registered sale deed cannot be taken away because of subsequent putting of the Act in the Ninth Schedule. Therefore, this review application is devoid of merit. Thus, it may be dismissed.

5. At the time of admission of the Second Appeal, two substantial question of law were formulated :-

- (i) As to whether the transfer by Darari and Kanhai sons of Butan being hit under Section 49C of Bihar Tenancy Act, convey any title to the plaintiffs.
- (ii) Whether the plaintiffs acquired any title with regard to the Goraiti Jagir by virtue of a sale in their favour in the

year 1959.

6. Both these substantial questions of law is dependent on the bar created under Section 49 (C) of the Bihar Tenancy Act. Article 31 (B) of the Constitution of India reads as follows :-

‘31-B. Validation of certain Acts and Regulations

– Without prejudice to the generality of the provisions contained in Article 31-A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provision thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any Court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.’

7. This Article was inserted by Constitution (1st Amendment) Act, 1951. In the Ninth Schedule of Constitution, the Bihar Tenancy Act, 1885 (Act No.8 of 1885) was inserted in 1991.



8. In view of this provision in the Constitution of India, none of the Acts specified in Ninth Schedule shall be deemed to be void or ever to have become void in spite of any judgment or decree. Now, therefore, in spite of the Full Bench decision referred to above, Section 49 (C) shall not be deemed to be void or ever to have become void. The Full Bench decision will have no effect. It will be deemed that Section 49 (C) of the Bihar Tenancy Act was there, is there and will remain there which will be subject to only competent legislation to repeal or amend it.

9. The Hon'ble Supreme Court in the case of *Board of Control of Cricket India Vs. Netaji Cricket Club AIR 2005 SC 592* has held that **'Section 114 of the Code and Powers a Court to review its order if the conditions precedent laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the Court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exist an error apparent on the face of the record but also if the same is**



necessitated on account of some mistake or for any other sufficient reason. Thus, a mistake on the part of the Court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exist sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47 Rule 1 is wide enough to include a misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine 'actus curiae neminem gravabit'.

10. In this matter, reference may be made to the decision of the Hon'ble Supreme Court in **AIR 2014 SC 2925 State of Rajasthan Vs. Surendra Manod.**

11. In view of this decision of the Hon'ble Supreme Court in this present case, for non-consideration of the fact that the Bihar Tenancy Act was put in Ninth Schedule of the Constitution, a misconception of law cropped into in the Judgment which is apparent from the face of the record. This mistake might have been committed by the petitioner but at the same time it can very

well be said that it is misconception of law committed by the Court also. When the Court find that there has been misconception of law in the order or judgment, there should not be any hesitation to accept the same and in my opinion, according to the Judgment of the Hon'ble Supreme Court, this is sufficient ground for review of the judgment sought to be reviewed.

12. In view of the above position of law, the transfer made by the vendor to the plaintiff was void transaction and because of that no title conveyed to the plaintiff. This is the answer of both the substantial questions of law.

13. In the result, this review application is allowed. The Judgment under review is set aside and it is held that the substantial question of law formulated in the Second Appeal quoted hereinabove are answered in favour of the appellant and the Second Appeal is allowed. The Judgment and Decree of the lower appellate Court is set aside. The Judgment and decree of the trial Court is confirmed. The plaintiff respondent's suit is dismissed.

Sanjeev/-

(Mungeshwar Sahoo, J)

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