

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.363 of 2012

In

First Appeal No. 515 of 1980

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Bidyapati Dev & Ors.

.... Petitioner/s

Versus

Lalita Devi & Ors.

.... Respondent/s

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Appearance :

For the Petitioner. – Mr. S. S. Dwivedi, Sr. Advocate

For the respondents - Mr. Birendra Nath Mishra, Advocate

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Dated : 6th day of September, 2016

P R E S E N T

CORAM : THE HON'BLE MR. JUSTICE MUNGESHWAR SAHOO

CAV O R D E R

1. This review application has been filed by the appellants of the First Appeal No.515 of 1980 for review of the Judgment dated 16.05.2012 passed by me in the aforesaid First Appeal dismissing the Appeal.

2. It appears that the plaintiff appellant petitioner had filed Title suit No. 267 of 1972 / 342 of 1974 claiming for partition of their share to the extent of 1/3rd. The contesting defendants respondents opposite parties filed written statement alleging that there had already been partition by metes and bounds in the year 1919. The trial Court



dismissed the plaintiff's suit recording finding that there had already been partition by metes and bounds. Against the Judgment and Decree, First Appeal was filed by the plaintiff being First Appeal No.515 of 1980. After hearing the parties by terms of Judgment dated 16.05.2012, the First Appeal was dismissed. To review this Judgment, the plaintiffs have filed this review application.

3. According to the learned senior counsel, there is apparent error on the face of the record. The date of exhibit 'W-1' has wrongly been mentioned as 21.10.1918. It is in fact 21.01.1918. This is the same document which is dated 25.09.1917. High Court while passing the Judgment committed error which is apparent on the face of the record by proceeding to decide the appeal treating these two documents as separate and, therefore, the Judgment is vitiated.

4. The learned senior counsel further submitted that in the written statements, there is no mention of any deed dated 21.01.1918. The deed dated 25.09.1917 was not signed by Raghunandan Mahto which was never acted upon and various other submissions were made as detailed in paragraph 10, 11 of review application but while passing the Judgment, this Court did not consider the same. Therefore, these are the error which are apparent on the face of the record and if these points had been considered, the result would have

been otherwise.

5. On the other hand, the learned counsel for the opposite party submitted that there is no error apparent on the face of the record. All the points which are being raised by the petitioner have already been considered in the Judgment.

6. From perusal of the Judgment, it appears that at paragraph 21, the submission of the learned counsel for the petitioner was noted. The finding recorded by this Court is not based on the exhibit 'W-1'. This Court considered various other documentary evidences and oral evidences and also various decisions of the Hon'ble Supreme Court and this High Court and thereafter confirmed the finding of the trial Court that there had been partition in the year 1919. So far the error apparent on the face of the record as submitted by the petitioner is concerned, even if it is held that both the document are one and the same then also it will prove that there was dispute between the parties in the year 1917 itself. The copersoners expressed their unequivocal intention to partition the property. This is recorded in the Judgment at paragraph 22. This Court also found that there are inter se transaction. The suit has been filed in the year 1972 and the partition had been alleged in the year 1919. Now, therefore, only because date of exhibit 'W-1' is wrongly typed or mentioned, it cannot be said that

this is an error apparent on the face of record so as to call for review.

This mistake or error is not going to the root of the case. Even if this evidence is ignored then also it cannot be said that on the basis of other evidences and the relating judgments, the finding would not have been arrived at.

7. So far the submission that many other points were raised which have not been considered by this Court is concerned, in my opinion, the question which are required to be considered for recording a finding regarding the controversy between the parties have been considered. Further, non-consideration of one argument or the other argument is not a ground for review.

8. In view of the above facts and circumstance of case, no case for review is made out.

9. **In the result, this review application is dismissed.**

(Mungeshwar Sahoo, J)

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