Bharat Singh (deceased) through LRs and othes Vs. Sidharth and others

Present: Mr. V.K. Jain, Senior Advocate with
Mr. Ravi Kadian, Advocate
for the applicants-appellants.

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The review of the order dated 25.05.2016 has been sought on the following grounds:-

(i) That this Court had converted the suit of declaration and joint possession into a suit for redemption.

(ii) That this Court had no jurisdiction to change the nature of the suit in the absence of application for amendment of the plaint and thus, inherent power of changing nature of suit cannot be exercised by this Court.

(iii) That this Court had permitted the plaintiffs to deposit ₹23,500/- which was neither claimed in the plaint nor orally prayed and thus, there is an error apparent on the face of the record.

The facts are already narrated in the order sought to be reviewed which reveal that the applicants-appellants are defendant Nos.1, 2 and 37, who have, as per the preliminary decree dated 15.12.1976, deposited the mortgage amount of their share and as well the share of the erstwhile mortgagee, thus, the redemption has become unredeemable. The applicants-appellants had concededly deposited the amount on 21.09.1996 and therefore, the respondents-plaintiffs, being lawful owners of 2/3 share, cannot claim the right of ownership in the property as per decree passed by both the courts below unless and until, they did not seek the redemption of the mortgage. If some property is sought to be mortgaged, it is only the settlement of the amount between the mortgagors or their assignees and the fact remains that the property stood redeemed way back. The aforementioned proposition came to be decided in the judgment rendered by the Hon'ble Supreme Court in ***Valliama Champaka Pillai's case*** where it has been held that the right of the non-redeeming co-mortgagor is an equitable right which continues to exist irrespective of whether the right of contribution which a redeeming co-mortgagor has against the other co-mortgagor, amounts to a mortgage or not.

The observation given by this Court is not for putting the clock back by ordering redemption of the amount, as has been projected by the senior counsel for the applicants-appellants in his arguments. Since they have paid the entire share of the mortgaged property including that of the respondents-plaintiffs, in order to prevent the miscarriage of justice, the share of 1/3rd of the plaintiffs was ordered to be given to the appellants and in view of such fact, both the appellants having 1/3rd share and the respondents-plaintiffs having 2/3rd share, have become co-owners as has been rightly observed by the Courts below in the judgments and decrees under challenge, therefore, the question of setting out a new case by granting the relief which was never sought, does not arise at all. It is just an imagination of the review petitioners rather the finding given in the judgment sought to be reviewed, is in consonance with the ratio decidendi as culled out in the judgment of the Supreme Court in ***Valliama Champaka Pillai's case***.

I do not find there is any error on the face of the record which is susceptible to review. No ground for interference is made out. The review application is dismissed.

(AMIT RAWAL)
JUDGE

July 14, 2016
Pankaj*