

...

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RA-RS-70-C-2014 in
RSA No. 1846 of 1989
Date of Decision : September 1st, 2016**

Smt. Bishan Devi and others ... Applicants-Appellants

Versus

Basti Ram and another Respondents

CORAM : HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present Mr. Ajay Jain, Advocate,
for the applicants-appellants.

Mr. Sanjay Mittal, Advocate,
for the respondents

SHEKHER DHAWAN, J.

Present Review Application under Order 47 Rules 1 and 2 read with Section 151 and 152 CPC for recalling/reviewing order dated 21.11.2014 passed by this Court whereby RSA No. 1846 of 1989 was ordered to be dismissed.

2. Learned counsel for the applicants-appellants submitted that the facts of the case are not disputed. The plaintiffs had filed a suit for declaration to the effect that they are owner in possession of the land and their predecessor-in-interest had taken possession of the suit land on 17.10.1964 in the execution proceedings. The defendants-respondents contested the suit taking the plea that the possession of the suit land was never delivered to the plaintiffs. Learned Additional Senior Sub Judge, Narnaul decreed the suit of the plaintiffs holding that the plaintiffs are

...

owner in possession of the suit land except for the land falling in khasra Nos. 108, 166, 403 and 49/15/2 and the plaintiffs were held entitled to get the revenue record corrected, vide judgment and decree dated 14.12.1987.

3. Thereafter both the parties to the suit preferred separate Civil Appeals and the Ist Appellate Court dismissed both the appeals and thereafter both the parties filed separate Regular Second Appeals before this Court. The appeal filed by the defendants, i.e., RSA No. 1674 of 1989 titled **Basti Ram etc. Vs. Smt. Bishan Devi etc.** was dismissed by this Court vide judgment and decree dated 27.10.1989 and the present appeal filed by the plaintiffs-appellants, i.e., RSA NO. 1846 of 1989 was admitted and the same was decided on 21.11.2014.

4. The main contention of learned counsel for the applicants-appellants is that there was an error apparent on the face of the record as the appeal pending before this Court as on 21.11.2014 was filed by the **plaintiffs** whereas, the observations were recorded by this court as if defendants were the appellants in this appeal and resultantly, the RSA was ordered to be dismissed as the Court was under the impression that the appeal filed by the defendants was under consideration, whereas all the findings and observations of this Court, contained in the order dated 21.11.2014 which is under review, were in favour of the plaintiffs-appellants and the findings of both the Courts below were that the plaintiffs-appellants were in possession of the suit property and they were entitled to get the revenue record corrected. While relying on the decision of Hon`ble Supreme Court in **State of Haryana Vs. Mohinder Singh and others**

...

2003(2) RCR [Civil] 642, learned counsel for the applicants submitted that such a matter should not be fixed for re-hearing while dealing with application under Order 47 Rule 1 CPC.

5. Reply to the Review Application has been filed by the respondents, *inter alia*, taking the plea that possession was never delivered to the plaintiffs on 17.10.1964. However, the respondents admitted that the trial Court vide judgment dated 14.11.1987 allowed the suit after holding that the suit of the plaintiff Nos. 23, 25, 40 and 52 was decreed and the plaintiffs are owner in possession of the suit land except land falling in Kharsa Nos.108, 166, 403 and 49/15/2 and they are entitled to get revenue record corrected. The factum of dismissal of both the appeals having been filed by both the parties by the Court of first Appeal was also not disputed. However, learned counsel for the respondents took the plea that this Court had rightly dismissed the appeal of plaintiffs-appellants as there was no merit. Review Application is without any merit and the same be dismissed.

6. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that there is no dispute on the main facts that the plaintiffs had filed suit for declaration to the effect that they are owner in possession of the land and their predecessor-in-interest had taken possession of the suit land on 17.10.1964 as per statement of Kanungo who had delivered the possession of the suit land and the plaintiffs are entitled to get the revenue record corrected. The first Appellate Court refrained from interfering in the said judgment on separate appeals having been filed by both the parties.

...

7. Apparently, there appears to be factual error in the judgment dated 21.11.2014 as the same was rendered taking the appellants to be “defendants” as is clear from the opening paragraph of the said judgment, whereas the present appeal was filed by the “plaintiffs”. This Court is of the considered view that the error in the judgment dated 21.11.2014 on above mentioned points is for correcting accidental omission/mistake and this is permissible within the scope of Order 47 Rule 1 and Section 152 CPC.

8. Identical matter was before Hon`ble Supreme Court in **Tilak Raj Vs. Baikunthi Devi [D] By Lrs, 2009(2) RCR [Civil] 385** wherein the Apex Court was of the view that the primary duty of the Court is to dispense justice and at the same time, if the Court comes to the conclusion that there is some error in the judgment, by exercising inherent power, the Court can certainly rectify the said mistake for sub-serving the cause of justice.

9. Resultantly, the present Review Application is allowed and the order dated 21.11.2014 dismissing RSA No. 1846 of 1989 is recalled. The main appeal is restored to its original number. The judgment dated 21.11.2014 uploaded on the High Court web site be deleted.

10. List the main appeal [RSA NO. 1846 of 1989] on 16.09.2016 as per roster.

(SHEKHER DHAWAN)
JUDGE

September 1st, 2016
som

Whether speaking/reasoned	:	Yes
Whether Reportable	:	No