

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Review No. 56 of 2015**

**IN**

**C.R. 814 of 2004**

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Smt. Uma Devi w/o Dharendra Kumar Singh Resident of village and P.O. Bilandpur, P.S. Mahua, District – Vaishali. At present residing in Mohalla - Islampur Nayatola Town and District - Muzaffarpur.

.... .... Petitioner

Versus

1(i) Smt. Prabhabati Devi, wife of late Sheo Bachan Singh

1(ii) Ranjan Singh, son of late Sheo Bachan Singh

1(iii) Santosh Singh, son of late Sheo Bachan Singh

1(iv) Ranjeet Singh, son of late Sheo Bachan Singh

All are jointly residing at his village Chainpur, P.S. Goraul, P.O. Chainpur, District Vaishali.

2. Dharendra Kumar Singh s/o Late Sheojee Singh Resident of village and P.O. Bilandpur, P.S. Mahua, District - Vaishali At present residing in Mohalla - Islampur Nayatola Town and District - Muzaffarpur.

.... .... Opposite Parties

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**Appearance :**

For the Petitioner : Mr. Rakesh Kumar Srivastava, Adv.

For the Respondent : Mr.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**

**C.A.V. JUDGMENT**

**Date: 02-11-2017**

This review petition has been filed under Order 47 Rule

1 read with Section 151 of the C.P.C. for review of judgment/order dated 20.02.2015 passed in Civil Revision No. 814 of 2004 by which and whereunder a Single Bench of this court dismissed the above stated Civil Revision No. 814 of 2004 on merit in absence of petitioner.

2. The original opposite party no. 1 had filed title suit



bearing Title Suit No. 55 of 1996 against the petitioner for recovery of possession of the disputed premises on the ground that he as well as his wife had purchased the disputed premises from mother in law of petitioner through two registered sale deeds and got possession of the suit premises but petitioner and opposite party no. 2 forcibly entered into the suit premises and took possession of the same. The petitioner, too, had filed a suit bearing Title Suit No. 248 of 1995 against her mother in law for specific performance of contract and the original opposite party no. 1 as well as his wife were also party to the aforesaid Title Suit No. 248 of 1995 being subsequent purchaser of the disputed premises. However, in Title Suit No. 55 of 1996 petitioner filed a petition under Section 10 CPC praying therein to stay the proceeding of aforesaid suit and the learned court below was pleased to stay the proceeding of Title Suit No. 55 of 1996 till disposal of Title Suit No. 248 of 1995 vide order dated 17.11.1998. The aforesaid Title Suit No. 248 of 1995 was decreed vide judgment and decree dated 15.05.2000 holding that petitioner was in possession of suit premises. The original opposite party no. 1 had preferred an appeal bearing Title Appeal No. 29 of 2000 and the first appellate court set aside the judgment and decree dated 15.05.2000 passed in Title Suit No. 248 of 1995 passing impugned judgment and decree dated 10.10.2001 against which second appeal bearing Second Appeal



No. 04 of 2002 has been preferred by the petitioner before this court and the said second appeal has been admitted for hearing. However, during pendency of aforesaid Second Appeal No. 04 of 2002, the original opposite party no. 1 filed a petition before the court below for recall of order of stay passed in Title Suit No. 55 of 1996 and the learned court below passing order dated 24.05.2004 recalled its previous order dated 17.11.1998 by which the trial of Title Suit No. 55 of 1996 had been stayed under Section 10 of the C.P.C. The petitioner challenged the order dated 24.05.2004 passed by the court below in Title Suit No. 55 of 1996 by filing Civil Revision No. 814 of 2004 which was dismissed by this court passing judgment/order under review.

3. The petitioner has sought review of judgment/order dated 20.02.2015 on two grounds. Firstly, this court committed an error apparent on the face of record by holding that Title Suit No. 248 of 1995 as well as Title Appeal No. 29 of 2000 were dismissed whereas in fact, Title Suit No. 248 of 1995 was decreed on 15.05.2000 and, therefore, it is obvious that the learned Single Judge, who dismissed Civil Revision No. 814 of 2004, committed mistake while taking note of facts of the case. Secondly, this court committed an error on the face of the record by holding that Title Suit No. 248 of 1995 and Title Suit No. 55 of 1996 are substantially different whereas



as a matter of fact, in both the aforesaid suits, the question of possession was involved. Thirdly, this court committed error in deciding the Civil Revision No. 814 of 2004 on merit in absence of petitioner as well as opposite party no. 2 and lastly, this court committed error in passing impugned order dated 20.02.2015 against a dead person because it was brought to the notice of this court that original opposite party no. 1 died during pendency of aforesaid civil revision but without impleading the legal representative of opposite party no. 1 this court passed the impugned judgment/order dated 20.02.2015.

4. Learned counsel appearing for the petitioner submitted that learned court below passed the judgment under review against a dead person and, therefore, in view of dictum given in **A.I.R 1962 Patna 178**, the judgment under review is an illegal judgment and the aforesaid illegality is apparent on the face of the record and, therefore, the judgment/order under review is liable to be reviewed.

5. Learned counsel appearing for the petitioner further submitted that before passing impugned judgment under review dated 20.02.2015 this court did not give any opportunity of hearing to petitioner and as a matter of fact, learned counsel appearing for original opposite party no. 1 misled the court claiming his appearance on behalf of other opposite party also whereas power executed by



original opposite party no. 1 in favour of his learned counsel had already seized. He further submitted that name of petitioner was also not printed in daily cause list which caused confusion to the learned counsel of petitioner and as a matter of fact, when the Civil Revision No. 814 of 2004 was taken up for hearing on 20.02.2015, learned counsel of petitioner could not appear before the court on account of his illness and, therefore, the judgment/order under review dated 20.02.2015 cannot sustain in the eye of law and is liable to be reviewed.

6. On the other hand, learned counsel appearing for the original opposite party no. 1 submitted that present review petition is not maintainable because there is no apparent mistake on the face of the record on the basis of which this court could review its previous order. He further submitted that the learned Single Judge has passed the impugned order dated 20.02.2015 in Civil Revision No. 814 of 2004 on merit and there is no illegality or irregularity in the order/judgment under review and, therefore, this court cannot interfere into the judgment/order under review dated 20.02.2015 while exercising the power of review. He further submitted that admittedly, when Civil Revision No. 814 of 2004 was taken up for hearing, learned counsel of petitioner failed to appear before the court and so far as original opposite party no. 1 is concerned, admittedly, he had died and an I.A.



No. 4982 of 2012 had been filed to bring the legal representative of deceased on record and this court allowed the aforesaid interlocutory application passing the impugned order dated 20.02.2015. He further submitted that moreover, the impugned order dated 20.02.2015 was passed in favour of original opposite party no. 1 and, therefore, even if there is any irregularity in passing the judgment/order under review, then also, the petitioner has no authority to challenge the judgment/order under review by filing review petition. He further submitted that admittedly, the legal representative of original opposite party no. 1 has not challenged the judgment/order under review and, therefore, at the instance of petitioner, the judgment/order dated 20.02.2015 cannot be disturbed. In support of his contention, he referred a decision reported in **1986 PLJR 476**.

7. Having heard the contentions of both the parties, I went through the record. I find force in contention of learned counsel appearing for the original opposite party no. 1. Admittedly, when Civil Revision No. 814 of 2004 was taken up for hearing, learned counsel of petitioner failed to appear before the court. It is also an admitted position that learned counsel of opposite party no. 2 also failed to appear before the court and only learned counsel of original opposite party no. 1 was present before the court. It is also an admitted position that original opposite party no. 1 had died during



pendency of Civil Revision No. 814 of 2004 and I.A. No. 4982 of 2012 had been filed to bring the legal heirs/legal representatives of deceased opposite party no. 1 on record and the said interlocutory application was allowed by this court passing order dated 20.02.2015. It is further an admitted position that judgment/order dated 20.02.2015 under review passed in Civil Revision No. 814 of 2004 was passed in favour of original opposite party no. 1 and against the petitioner as well as opposite party no. 2. It is further an admitted position that legal representatives/legal heirs of original opposite party no. 1 has never challenged judgment/order dated 20.02.2015 under review passed in Civil Revision No. 814 of 2004 as the aforesaid judgment/order was passed in their favour. Therefore, I am of the opinion that petitioner has no right to seek review of aforesaid judgment/order dated 20.02.2015 passed in Civil Revision No. 814 of 2004 on the ground that aforesaid judgment/order is against the dead person. As I have already stated that learned Single Judge had already permitted to bring legal representative of original opposite party no. 1 on record though there is nothing in the impugned order to show that as to whether legal representative of original opposite party no. 1 had appeared before the court at the time of passing impugned order dated 20.02.2015 or not but admittedly, the aforesaid judgment/order dated 20.02.2015 was passed in favour of original opposite party no. 1.



Therefore, in view of law laid down by Apex Court of this country in **N. Jayaram Reddi vs. Revenue Divisional Officer (AIR 1979 SC 1393)**, I am of the opinion that above stated ground of the petitioner is liable to be rejected and accordingly, the said ground is, hereby, rejected.

8. The petitioner has sought review of judgment/order under review dated 20.02.2015 on the ground that learned Single Judge wrongly held that subject matter of above stated two suits are quite different but in my view, this court while exercising jurisdiction of review cannot disturb its previous finding and, therefore, the aforesaid plea of the petitioner is also, hereby, rejected.

9. So far as explanation of non-appearance of learned counsel of petitioner at the time of hearing of Civil Revision No. 814 of 2004 as well as printing of wrong name of the petitioner in daily cause list are concerned, in my view, the aforesaid two grounds can never be a ground of review. Admittedly, the Court can exercise power of review, if there is apparent mistake on the face of record but in the present case, I do not find any apparent mistake on the face of the record which goes to the root of the case. No doubt, some factual error appears to have been committed in judgment/order dated 20.02.2015 but that factual error does not make any difference because even if it assumed that the petitioner got decree in Title Suit



No. 248 of 1995 and the aforesaid fact was wrongly mentioned by this court, then also, the aforesaid decree was set aside by the appellate court and, therefore, in my view, the aforesaid factual error does not cause any prejudice to the petitioner.

10. On the basis of aforesaid discussions, I am of the opinion that this review petition does not have any merit and, accordingly, this review petition stands dismissed.

**(Hemant Kumar Srivastava, J)**

SHAHZAD/-

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