

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.290 of 2016

=====

DIPAK KUMAR BANERJEE S/O LATE SUNIL KUMAR BANERJI RESIDENT
OF BIJAY GOPAL BANERJEE PATH, DARIYAPUR, P.S- PIRBAHORE,
TOWN & DISTRICT- PATNA- 800004.

.... PETITIONER/S

VERSUS

1. SYED MD.SANAULLAH S/O LATE BADRUDDJA RESIDENT OF
MAHALLA- MURGAH ROAD, MANDAI, P.S- SULTANGANJ, P.O-
SULTANGANJ, TOWN & DISTRICT- PATNA- 800006.
2. SMT. MINAKSHEE BANERJEE W/O DIPAK KUMAR BANERJEE.
3. SANDIPAN BANERJEE S/O DIPAK KUMAR BANERJEE.

BOTH RESIDENT OF BIJAY GOPAL BANERJEE PATH, DARIYAPUR,
P.S- PIRBAHORE, TOWN & DISTRICT- PATNA- 800004.

.... RESPONDENT/S

=====

Appearance:

For the Petitioner/s : Mr. Kalyan Kumar Ghose, Adv.
For the Respondent/s : Mr. Arshad Jamal Hashmi, Adv.
Mr. Kamal Kishore Singh, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

C.A.V. ORDER

Date: 12-04-2017

Petitioner has prayed for review of order dated
09.05.2016 passed in Misc. Appeal No.284/2013.

2. Before coming to the main issue, it looks desirable to
incorporate the facts of the case in brief.

3. Title Suit No.251/2006 has been instituted by the
opposite party no.1/plaintiff against the petitioner and others under
the banner of Specific Performance of Contract in pursuance of
alleged agreement dated 24.11.2003 and for that, the relevant
averments have been made in the plaint. Petitioner-defendant



appeared and filed W.S. wherein, there happens to be specific denial regarding execution of deed of agreement dated 24.11.2003 as claimed by the opposite party no.1/plaintiff. Furthermore, the W.S. also contains specific denial with regard to other averments of the plaint. Subsequently thereof, a petition was filed on 06.01.2010 under Order-VII, Rule-10 of the CPC on behalf of petitioner/defendant to direct the plaintiff to file original deed of agreement dated 24.11.2003 which the lower court allowed vide order dated 06.01.2010 which is yet to be complied with. However, the opposite party no.1/plaintiff filed petition under Order-XXXIX Rule-1 of the CPC on 14.03.2011 which was properly contested by the petitioner/defendant by way of filing objection. After hearing the parties, the learned lower court passed order on 18.11.2012, which has been challenge under M.A. No.284/2013, and after disposal of the same, instant civil review has been filed.

4. It has been submitted on behalf of petitioner/defendant no.1 that for want of non-production of original document, the petition dated 14.03.2011 under Order-XXXIX Rule-1 could not survive. That being so, the learned lower court, and in likewise manner under Misc. Appeal No.284/2013, the order as exist, would not have been passed on the basis of an averment made under para-13 of the objection petition filed on behalf of petitioner/defendant no.1. Hence, the same needs review and for that instant petition has been filed. Hence, review petition be allowed.



5. Apart from ornamental objection coming to main ground, it is evident from para-13 of the objection petition that there happens to be specific disclosure that there is no need to alienate his property which the learned lower court perceived while passing the order dated 18.12.2012 over petition dated 14.03.2011 filed under Order-XXXIX Rule-1 & 2 directing that as per para-13 of the reply, the defendant should not transfer the land and in terms thereof, petition was disposed of. Against the aforesaid order Misc. Appeal No.284/2013 was filed and the same was rejected vide order dated 09.05.2016 observing:

“By the order impugned, it is evident that the learned lower court had disposed of injunction petition filed on behalf of plaintiff/respondent in terms of disclosure made by the appellant/defendant under para-13 (Annexure-6).

That being so, there needs no cogent ground to interfere therewith.”

6. It has been submitted that when suit was not maintainable, then in that event aforesaid order would not have been passed. In order to buttress such submission, it has been submitted that in terms of Registration Act as well as Section 53A of the T.P. Act, the unregistered document has got no legal identity coupled with the fact that the opposite party/plaintiff in spite of positive order of the learned lower court failed to file original document and the cumulative effect thereof make the suit non-maintainable whereupon, neither a prayer under Order-XXXIX Rule-1 of the CPC is found maintainable nor the order impugned. Consequent thereupon, the



order impugned is fit to be reviewed.

7. The scope of review has been considered in *Sasi (D) through LRs. V. Aravindakshan Nair and others* reported in *AIR 2017 SC 1432* whereunder at para-8 & 9 it has been held:

“8. In *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715 the Court after referring to *Thungabhadra Industries Ltd. (supra)*, *Meera Bhanja v. Nirmala Kumari Choudhury* (1995) 1 SCC 170 and *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* (1979) 4 SCC 389, held thus:-

“Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise””.

9. The aforesaid authorities clearly spell out the nature, scope and ambit of power to be exercised. The error has to be self-evident and is not to be found out by a process of reasoning. We have adverted to the aforesaid aspects only to highlight the nature of review proceedings.”

8. The order impugned has been gone through minutely along with the relevant annexures coupled with submission raised by the learned counsel for the petitioner. From para-13 of the objection, it is evident that petitioner/defendant had himself divulged that he is not going to sale the land and the same has been taken note of by the learned lower court during course of disposing of petition under



Order-XXXIX Rule-1 of the CPC. The aforesaid theme has also been taken note of while rejecting Misc. Appeal No.283/2013. Therefore, no cogent reason is found to accede with the prayer made on behalf of petitioner whereunder it could be perceived that the order passed under Misc. Appeal No.283/2013 needs review on account of inherent defect, due to non-filing of original document, which happens to be separate event attracting proper adjudication under main suit, and in likewise manner, maintainability of the suit. Consequent thereupon, petition is rejected.

9. The suit is of the year 2006 and on account thereof, the learned lower court is directed to proceed with the trial and dispose it of within nine months positively without granting any kind of undue adjournment to any of the party. Side by side, the District and Sessions Judge, Patna is also directed to keep vigil thereof, so that the trial should not be hampered on account of its pendency before the vacant court.

10. Office to communicate and procure compliance report from the concerned court after expiry of aforesaid period.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	NAFR
CAV DATE	29.03.2017
Uploading Date	13.04.2017
Transmission Date	N.A.

