

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.90 of 2016

In
Second Appeal No.285 of 2013

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1. Prabhunath Puri Son of late Kapildeo Puri
 2. Ram Lakhan Puri son of late kapildeo Puri
 3. Dashrath Puri Son of late Kapildeo Puri
 4. Om Prakash Puri Son of late Kapildeo Puri
 5. Raj Kumar Puri Son of late kapildeo Puri
 6. Kalawati Devi D/o late Kapildeo Puri
 7. Shakuntala Devi D/o late Kapildeo Devi
 8. Gandhi Devi D/o late Kapildeo Puri All are resident of Village-
Machhagar Jagdish PS Mirganj, PO Hathuwa, Distt Gopalganj.
 9. Bankapuri S/o late Parmhans Puri
 10. Smt. Rugdi D/o late Parmhans Puri
 11. Smt. Kusumidevi D/o late Parmhans Puri
 12. Ram Bihari Puri S/o late Naina Puri All are resident of Village-
Machhagar Jagdish PS Mirganj, PO Hathuwa, Distt Gopalganj.

... .. Petitioner/s

Versus

1. Tota Puri S/o late Ambika Puri
2. Sudarshan Puri S/o late Ambika Puri
3. Paspatti Puri S/o late Ambika Puri
4. Chandeshwar Puri S/o late Ambika Puri
5. Subash Puri S/o late Ambika Puri
6. Smt. Parphawati Devi W/o Parsuram Puri, D/o late Ambika Puri Resident of
Village Chintanwapur, P.S. Dara, Wandha, Distt Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. J. S. Arora, Sr. Adv. Mr. Jitendra Kumar Shrivastwa
For the Respondent/s	:	Mr. Ajay Kumar Tiwari

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

16 18-09-2017 The petitioners seek review of the order, dated 15.12.2015, passed by this Court, in Second Appeal No. 285 of 2013, whereby this Court has dismissed the said second appeal, since, in the Court's opinion, no substantial question of law arose for consideration in the appeal.



The grounds, which have been taken to seek review of the order of this Court, dated 15.12.2015, have been enumerated in paragraph 6 of the present review application, which are as under:-

“(i) For that the any question of self acquired property could be assured simply on the basis of service in sugar factory which provides seasonal employment of 3-4 month in year even father of appellant no. 1 to 8 and father of appellant no. 12 also doing in service in said sugar factory.

(ii) For that the learned appellate court erred in holding that suit is not maintainable as barred under Section 4 of the Benami Transaction Prohibition Act 1985 in absence of any whisper about Benami Transaction in written statement.

(iii) For that the learned lower appellate court while reversing the judgment of the trial court failed to consider the evidence adduced and specific statement of defence witness with regards to the suit property.

(iv) For that the learned lower appellate court erred in consideration the impart of decision reported in AIR 2003 SC 3800.



(v) For that as per statement of defendant no. 1, the partition was made in the year of 1940 then obtain the said some land part 1946-1955 and 1961, but in the year of 1963, appellant also made party by Bacha Puri case.

(vi) For that defendant no. 1 living separately then how can receive the compensation money of Dinbasgit land 872 in the year of 1970 and same should be distributed between all parties.

(vii) For that para 9 of point no. 1 of lower appellate court judgment is not in proper i.e. during lifetime of father land is not to purchase by name of son.

(viii) For that the learned lower appellate court not consider the facts page 18 and 19 of trial court judgment about ex-D, ex-K and K-I.

(ix) For that the grandfather of the appellant and respondent died in the year of 1956-57 and he was the karta of the family in his lifetime not the defendant no. 1.

(x) For that plaintiff and defendant no. 2 and 3 are residing in the disputed house as a share-holder the defendant no. 1 filed the T. S. No. 172/1955 and claimed 2 katha 4 dhur in R. S. plot no. 1026 in which house of the



plaintiff in shown in the eastern boundary of disputed house in R. S. pot no. 1026 and as such the house of the plaintiff existed in the disputed land since before 1954 and not in 1989.

(xi) For that from the Exts. M and M/1 are the certified copy of the pariwarik pustika prepared in 1959 shows that Kapildeo Puri (Plaintiff) was residing in house no. 99 and the (defendant no. 1) Ambika Puri was residing in house no. 99K and as such they were residing in jointness as there is no separate house number.

(xii) For that from the Ext. 5 the voter list of 1975 shows that the entire family members of plaintiff and defendants are residing in house no. 83. The serial number of members are from 467 to 484 Chaukidari Tax receipt also stands the name of parties.

(xiii) For that in para 7 of cross examination, the defendant no. 1 admitted that he has received compensation money of Dih Basgit land 872 in 1970 where the parties used to live.

(xiv) For that one Bachcha Puri filed a complaint as 13.8.1963 in the court of Sarpanch Gram Panchayat of Machhagar Jagdish with a prayer that



Ambika Puri, Paramhansh Puri and Kapildeo Puri are discharging water in the land of complainant from the house standing in R. S. plot no. 1026 and as such the disputed plot is joint family properties and they are residing in the disputed land as a sharer since 1950.

(xv) For that D.W. 6 Tola Puri son of the Ambika Puri has admitted in para 4 of cross examination that his grandfather was karta of the family till his death and his sons were giving money to their father and the defendant no. 1 has purchased the land out of the income of his sons.

(xvi) For that the learned lower appellate court failed to appreciate that parties are living in jointness since 1950 in contrary to the material facts.

(xvii) For that the judgment and decree of the lower appellate court is otherwise also illegal arbitrary and perverse.”

I have heard Mr. J. S. Arora, learned Senior Counsel, appearing on behalf of the petitioners and Mr. Ajay Kumar Tiwari, learned Counsel representing the respondents.

I have purposely reproduced all the grounds taken in the application seeking review since I am of the view that none of



the grounds are germane for exercise of power of review of an order or judgment under Section 114 read with Order 47 Rule 1 of the Civil Procedure Code, 1908 (Hereinafter referred to as the Code) . The said rule requires power of review to be exercised when a party is able to satisfy the Court that on account of some mistake or error apparent on the face of record, the order needs to be reviewed in the interest of justice. Such power can also be exercised on discovery of new and important matter or evidence which, despite exercise of due diligence, was not within the knowledge of the aggrieved party or could not be produced by him at the time of making of the order.

There are series of decisions of the Supreme Court laying down that the scope of power of review as envisaged under Order 47 Rule 1 of the Code is very limited and the review must be confined strictly, only to the errors apparent on the face of the record. An error which has to be adjudicated by a process of reasoning and an error, which is not a self-evident cannot be said to be an error apparent on the face of record.

In the present case, I find that there is no ground taken that a substantial question of law, in fact, arose, which this Court failed to take note of, while dismissing the appeal under Order 41 Rule 11 of the Code. There is no ground taken that there is



any error apparent on the face of record of the order under review. A review is by no means an appeal in disguise.

An order dismissing a second appeal under Order 41 Rule 11 of the Code cannot be questioned on the ground of ‘error apparent,’ under the guise of review unless it is shown that substantial question of law, in fact, arose from the case, which the Court missed to notice because of such ‘error apparent’. Even mere error of law cannot be a ground for review. Such error must be self-evident. In the present case, I find that there is absolutely no such pleading in the review petition or grounds taken therein, putting valid justification for review of the order.

Situated thus, I am of the view that there is no sufficient ground for review of the order, dated 15.12.2015, passed by this Court, in Second Appeal No. 285 of 2013.

The review petition is devoid of merit and it is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

Prabhakar Anand/-c

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