

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.29 of 2015

In

F.A. 270 of 1996

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Dera Sahi Samadan Patiala

.... Petitioner

Versus

Mahanth Madan Kumar Das

.... Opposite party

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. ORDER

21 07-03-2017 I have already heard learned Senior Counsel Mr. J.S. Arora for the petitioner and learned counsel Mr. Raju Giri for the sole opposite party.

2. This review application has been filed for review of judgment and decree dated 09.10.2014 passed by this Court in First Appeal No.270 of 1996.

3. The only error apparent on the face of the record pointed out by the learned Senior Counsel Mr. J.S. Arora is that the plaintiff no.1 claimed himself to be the *Mahanth* of plaintiff no.2 and the real owner of the suit property is plaintiff no.2 whereas while allowing the first appeal after reversing the judgment of the trial court this Court decreed the plaintiffs' suit *in toto* without specifying as to which plaintiff has got title and therefore, the judgment be reviewed. For pointing out the error



apparent on the face of the record, he placed paragraphs 1 and 6 of the plaint and also paragraphs 3, 23 and 35 of the judgment under review and submitted that this Court also found that plaintiff no.2 is the owner and plaintiff no.1 is the *Mahanth* only.

4. On the other hand, the learned counsel Mr. Raju Giri for the opposite party submitted the petitioner has got no *locus standi* to file this review application and moreover the plaintiffs' suit has been decreed. The illegality or otherwise of the finding cannot be examined in review as if this Court is sitting in appeal. The scope of review is limited. The learned counsel relied upon the decision of the Supreme Court **A.I.R. 2013 Supreme Court 3301 (Kamlesh Verma Vs. Mayawati & Ors.)**. Secondly, the learned counsel submitted that Petition for Special Leave to Appeal (C) No.5023 of 2015 is pending before the Supreme Court.

5. So far the decision relied upon by the learned counsel for the opposite party is concerned, it is settle principles of law and there is no dispute about that. The only dispute is whether there is error apparent on the face of the record. So far *locus standi* of the petitioner is concerned, it may be mentioned here that in the plaint itself plaintiff no.2 has been described as Sri Sri 108 Ati Prachin Udasin Sangat and at paragraph 2 of the plaint it is specifically mentioned that Dera Sahi Samadan Patiala is the



superior *Akhara* and *Matha* belonging to the said sect. This superior *Akhara* is the petitioner. Moreover, the petitioner being the superior *Akhara* of plaintiff no.2, which is admitted by the plaintiff no.1-opposite party has got the *locus standi* to point out any error apparent on the face of the record causing loss to the petitioner or confusion in the judgment.

6. So far pendency of Petition for Special Leave to Appeal before the Supreme Court is concerned, it is admitted fact that the petitioner has not filed Petition for Special Leave to Appeal before the Supreme Court.

7. Now, let us see whether there is error apparent on the face of the record. As stated above from perusal of the paragraphs 1 and 6 of the plaint, it is clear that plaintiff no.1 is claiming to be the *Mahanth* of plaintiff no.2 and plaintiff no.2 is the title holder. This is the finding of this Court also in the judgment under review, which would be evident from paragraphs 1, 23 and 35. Now in view of the claim made in the plaint and in view of the finding of this Court plaintiff no.1 is the *Mahanth* and plaintiff no.2 is the owner but in the judgment at paragraph 38 there is no specification to this effect and the plaintiffs' suit has been decreed *in toto*.

8. Order 41 Rule 31(d) CPC provides that judgment of



the appellate court should state the relief to which the appellant is entitled but this is not mentioned in the result of the appeal. In my opinion, this is error apparent on the face of the record. Therefore, paragraph 38 of the judgment is substituted as under for making clarification and removing ambiguity:

“38. In the result, this First Appeal is allowed. The impugned judgment and decree passed by the trial court are hereby set aside. The plaintiffs-appellants’ suit is decreed with cost of Rs.10,000/-(rupees ten thousand) to be paid by the defendants-respondents jointly or severally to the plaintiffs-appellants. The title of the plaintiff no.2 over the suit property is declared and it is held that the plaintiff no.1 is the *Mahanth* of plaintiff no.2. The cost must be paid within two months from today failing which the appellants are at liberty to realize the same from the defendants jointly or severally through the process of the Court.”

9. Thus, this civil review application stands allowed.

(Mungeshwar Sahoo, J)

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