

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1228 of 2017

IN

First Appeal No. 347 of 1986

=====

1. Amleeya Khatoon @ Ambiya Khatoon, Wife of Qaisar Ali, D/o Late Sk. Azizul Haque @ Bachhu Babu.

2. Jayba Khatoon @ Tayaba Khatoon, Wife of Akhtar Ali, D/o Late Sk. Azizul Haque @ Bachhu Babu.

3. Shamima Khatoon, Daughter of Late Sk. Azizul Haque @ Bachhu Babu.

All residents of Village-Aranda, P.S.-M.H. Nagar, Hasanpura, District-Siwan.

4. Ekramul Haque.

5. Enamul Haque.

6. Ehsanul Haque.

Sons of Late Sk. Late Sk. Ferozul Haque @ Mulla Babu.

7. Nayema Khatoon, Daughter of Late Sk. Ferozul Haque @ Mulla Babu.

.... Respondent Nos. 10(a) to (c) and 11(i) to (iv)-Petitioner/s

Versus

1. Iftekhhar Ahmad, Son of Late Sk. Shafi Ahmad.

2. Bibi Maimunnisa, Wife of Late Sk. Shafi Ahmad.

3. Shaukat Tara, Daughter of Late Sk. Shafi Ahmad.

All residents of Village-Aranda, P.S.-Mazhurul Haque, Nagar Hasanpura, District-Siwan.

.... Appellants-Opposite Parties 1st Party

4. Shamsul Hoda, Son of Late Bibi Sabra & Late Bechu Mian.

5. Laila.

6. Shaiyda @ Shaida.

Both are Daughters of Late Bibi Sabra and Late Bechu Mian.



All residents of Village-Semra, P.S.-Thawe, District-Gopalganj.

.... Respondents-Opposite Parties

7. Taibun, Daughter of Late Mainuddin.
 8. Asia Khatoon, Daughter of Sk. Anwar Ahmed.
 9. Md. Irfan.
 10. Md. Gufran.
 11. Md. Talha.
 12. Md. Umair (Minor).
 13. Umme Habiba (Minor), Daughter of Sk. Anwar Ahmad.
 14. Md. Akram (Minor), Son of Sk. Anwar Ahmad.
- Minor under the guardianship of Asia Khatoon, mother and natural guardian of Minor with whom she has no adverse interest.
15. Israrul Hoda @ Israil Hoda, Son of Late Sk. Nabi Ahmad.
 16. Haidri Khatoon, Wife of Khairat Hussain.
 17. Bibi Masoom Jannat, Wife of Late Sk. Nabi Ahmad.
 18. Sk. Nazir Ali @ Bare Babu, Son of Late Sk. Muzaffar Haque.
 19. Zaffar Saba @ Mister.
 20. Anwer Sab @ Bhattu.
- Sons of Sk. Gairul Hassan.
21. Nargis Khatoon.
 22. Sanjida Khatoon @ Samjida Khatoon.
 23. Bunni Khatoon.
- Daughters of Sk. Gairul Hassan.
24. Sahabun Nissa @ Bibi Shahabun, Wife of Late Sk. Gairul Hasan.
 25. Sk. Sohail Ahmad @ Jhunnu Babu, Son of Late Sk. Muzaffar Haque.
 26. Bibi Taslima @ Babbi, Wife of Late Muzaffar Haque.
 27. Bibi Husna @ Babun, Wife of Late Sk. Abdul Majid.
- Nos. 7 to 27 are residents of Village-Aranda, P.S.-Mazaharul Haq Nagar, Hasanpura, District-Siwan.

.... Respondent Nos. 4 to 27-Opposite Parties 2nd Party

=====



Appearance :

For the Petitioner/s : Mr. Najmul Hoda, Adv.

Mr. Mdataul Haque, Adv.

For the Opposite Party/s : Mr. Shashi Shekhar Dwivedi, Sr. Adv.

Mr. Parth Gaurav, Adv.

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT & ORDER

Date: 07-02-2018

Heard learned counsel for the petitioners and learned Senior counsel appearing on behalf of the opposite parties.

2. An application for modification has been filed seeking to modify the judgment and order dated 25.08.2015, passed in First Appeal No. 347 of 1986, by a Bench of this Court, presided over by Hon'ble Mr. Justice Mungeshwar Sahoo.

3. Learned counsel appearing on behalf of the petitioner submits that the present application was initially filed as a M.J.C. application, but was subsequently converted into a Civil Review application. However, during the course of arguments, at a previous date, the said Civil Review application was once again permitted to be converted into modification application. Notices were, accordingly, issued to the opposite parties and after service of notice the opposite parties have now appeared and have contested the matter.



4. Learned Senior counsel appearing on behalf of the opposite parties submits that the present application, seeking modification, is not maintainable as Section 151 of the Code of Civil Procedure (*in short* '**the CPC**') have no application where there is a specific provision provided. It is submitted that the First Appeal was disposed of under the terms of Order 12 Rule 6 of the CPC, wherein the parties had made admissions of fact and after hearing the parties, the Court, being fully satisfied, was pleased to pass the judgment and order dated 25.08.2015. It is further submitted that the present modification application seeks to make a material change in the judgment and order, which cannot be made in the modification as well as in the review application, which too, was not maintainable. However, a review application can be entertained only for specific reasons, which includes there being an error apparent on the face of the record.

5. Learned Senior counsel has further submitted that in the present modification application, the petitioners have sought to undo what they have done at the time of disposal of the First Appeal and if, at all, they had any grievance, it was open to them to challenge the same before an appropriate forum. Thus, neither a Civil Review application is maintainable nor is the present modification application is fit to be entertained.

6. Learned Senior Counsel appearing on behalf of



the opposite parties has drawn my attention to a decision of the Hon'ble Apex Court in case of ***Shankar K. Mandal & Ors. Vs. State of Bihar & Ors.***, reported in **2003 (9) SC 519**, especially to paragraph 10, 11 and 12, wherein the practice and procedure to be recorded with regard to happenings in Court has been described and the procedure prescribed, as per the said decision, appears to be that the parties aggrieved, should draw the attention of the High Court if, at all, such miscarriage of justice has occasioned. Paragraph 10, 11 and 12 of the said decision reads thus:-

10. It is not open for the appellants to take such stand before this Court, as they are bound by the observations of the High Court. If there was any wrong recording of the stands, the course to be adopted is well known.

11. If really there was no concession, or a different stand was taken, the only course open to the appellant was to move the High Court in line with what has been said in *State of Maharashtra v. Ramdas Shrinivas Nayak*. In a recent decision *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.* the view in the said case was reiterated by observing that



statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to the appellant to contend before this Court to the contrary.

12. It is also not open to contend that a plea raised was not considered. In *Daman Singh v. State of Punjab* it was observed (in para 13) as follows:
(SCC p. 682)

"13. The final submission of Shri Ramamurthi was that several other questions



were raised in the writ petition before the High Court but they were not considered. We attach no significance to this submission. It is not unusual for parties and counsel to raise innumerable grounds in the petitions and memoranda of appeal etc., but, later, confine themselves, in the course of argument to a few only of those grounds, obviously because the rest of the grounds are considered even by them to be untenable. No party or counsel is thereafter entitled to make a grievance that the grounds not argued were not considered. If indeed any ground which was argued was not considered it should be open to the party aggrieved to draw the attention of the court making the order to it by filing a proper application for review or clarification. The time of the superior courts is not to be wasted



in enquiring into the question whether a certain ground to which no reference is found in the judgment of the subordinate court was argued before that court or not?"

7. In the instant case, though no such ground of fraud has been made out in the modification application, the arguments have been advanced towards the said directions and nothing has been brought on record to demonstrate such fraud, as is sought to be pointed out to this Court. In such circumstances, this Court is unable to accept such arguments and the same is, accordingly, rejected.

8. Learned counsel for the petitioners has further pointed out that at the time of disposal of the First Appeal, the present petitioners were not present. However, it appears that the present petitioners had also filed a substitution petition, dated 24.08.2015, itself and were present at the time of the disposal of the Appeal.

9. The substitution petitions of the petitioners, brought on record by way of I.A. No. 7012 of 2015, were represented by the counsel, who has filed the present modification application, and the substitution petitioners are none other than the heirs of opposite party Nos. 1 and 10.



10. Having considered all the facts and circumstances of the case, this Court finds no necessity to modify the judgment and order dated 25.08.2015, which is sought to be done in the present modification application.

11. This application is, accordingly, dismissed.

(Anjana Mishra, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09/02/2018
Transmission Date	N/A

