

THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.302 of 2016

In

Second Appeal No.08 of 2014

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1. Kalika Rai Son of Late Chandrika Rai
 2. Kalpnath Rai Son of Late Chandrika Rai
 3. Prabhunath Rai Son of Late Chandrika Rai
 4. Shambhunath Rai Son of Late Chandrika Rai All residents of Village - Sangrampur, P.S. - Mirganj (Fulwariya), District - Gopalganj.
 5. Shanti Devi Daughter of Late Chandrika Rai, W/o Jitundra Rai Resident of Village - Semariya, P.S. - Kateya, Distt. - Gopalganj.
 6. Kaushalya Devi W/o Late Laxmi Rai
 7. Bhrigunath Rai S/o Late Laxmi Rai
 8. Basanti Devi W/o Dinesh Rai and daughter of Late Laxmi Rai
 9. Awadh Kishore Rai S/o Inderdeo Rai
 10. Harendra Rai Son of Inderdeo Rai
 11. Narendra Rai Son of Inderdeo Rai All are residents of Village - Sangrampur, P.S. Mirganj (Fulwariya), District - Gopalganj.

... .. Petitioner/s

Versus

1. Suryadeo Rai S/o Late Ramanand Rai
2. Dharamnath Rai S/o Suryadeo Rai
3. Raghunath Rai S/o Suryadeo Rai
4. Yadunath Rai S/o Suryadeo Rai All are residents of Village - Sangrampur, P.S. Mirganj (Fulwariya), District - Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sashi Shekhar Dwivedi, Sr. Advocate
with Mr. Ranjan Kumar Dubey
For the Respondent/s : Mr. Vinay Kant Mani Tripathi, Advocate

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT

Date : 10-08-2018

The petitioners seek review of the judgment and



order dated 06.04.2016, passed by this Court in S.A. No. 08 of 2014, whereby the second appeal of the petitioners has been dismissed at the stage of hearing under Order 41 Rule 11 of the Code of Civil Procedure, 1908. The second appeal arose out of the Title Suit No. 251 of 2001, instituted by these petitioners. The suit was dismissed by judgment and decree dated 26.10.2010, passed by the learned Munsif, Gopalganj, against which the petitioners had preferred appeal, giving rise to Title Appeal No. 97 of 2010. The first appellate Court affirmed the judgment and decree of the trial Court by judgment and decree dated 03.10.2013. Second appeal of the petitioners, i.e., Second Appeal No. 08 of 2014 assailing the judgment and decree dated 03.10.2013, passed in Title Appeal No. 97 of 2010 has been dismissed by the order under review dated 06.04.2016.

2. I have heard Mr. Sashi Shekhar Dwivedi, learned Senior Counsel, appearing on behalf of the petitioner and Mr. Vinay Kant Mani Tripathi, learned Counsel representing the respondents/defendants.

3. Mr. Shashi Shekhar Dwivedi, learned Senior Counsel, appearing on behalf of the petitioners contends that the judgment under review suffers from an apparent error of record inasmuch as a disputed fact has been assumed to be an admitted



fact and date of death of Haridwar Rai has been wrongly recorded, which has got great bearing on the merits of the case. He has argued that legal effect of non consideration of documentary evidence led by the petitioners, particularly Ext.-A as well as Exhibits 2,3 and 4 including the Commissioner's report has not been considered by this Court while dismissing the second appeal. Non-consideration of the alternative plea of the petitioners concerning the acquisition of title by adverse possession, according to him, is also a ground for review of the judgment and order passed in second appeal. He has lastly submitted that one Matirano Kuer had two kinds of rights in respect of the suit property:- firstly her personal right with respect to her paternal property and her right of maintenance only in respect of her husband's property. In that background, according to him, deed of gift executed by her to the extent the same relates to her husband's property is nullity in the eye of law, which aspect has not been considered by this Court in the judgment and order under review.

4. In order to appreciate the grounds taken in the review application and submissions advanced on behalf of the petitioners, I need to briefly take note of the case of the parties first as pleaded by them.



5. This is not in dispute that the disputed property originally belonged to Haridwar Rai, which was his self acquired property. It is the case of the petitioners as asserted in the review petition that Haridwar Rai died in the year 1924 issueless leaving behind his widow Matrirano Kuer, who also dies in 1952.

6. Admittedly, Matirano Kuer had executed a gift deed on 19.12.1954, in respect of the property, which she had received by way of gift from her parents as also the property which she had inherited upon the death of her husband in favour of Chauraso Kuer. The capacity of Matirano Kuer to execute the gift deed in respect of the property, which she had inherited after death of her husband is at the core of dispute. The plaintiffs, who are successors of Gopal Rai, son of Sheodutt, one of the brothers of Haridwar were the plaintiffs. Defendants were the successors of brother of Gopal, namely, Ramnandan. The plaintiffs claimed partition in respect of the self acquired property of Haridwar Rai, which according to them merged in the joint family property after his death with only right left to his widow Matirani Kuer of her maintenance. As has been noted by this Court in the judgment and order under review, the Courts below came to concurrent finding that upon the death of



the admitted original owner Haridwar Rai, his estate was exclusive inherited by his widow Mosmat Matirano Kuer and execution of the gift deed in favour of the predecessor of the defendant in the year 1954 was legal and valid.

7. Be it noted that the dispute in relation to execution of the gift deed by Mosmat Matirano Kuer, widow of Haridwar Rai is in respect of self acquired property of Haridwar Rai. This aspect has specifically been dealt with in the judgment and order under review.

8. This is settled legal principle that review Court cannot sit as appellate Court and mere possibility of two views cannot be a ground for review. Review cannot be an appeal in disguise. Reassessment of the evidence and pointing out defect in the order under review by the review Court is impermissible. It is trite law that a review cannot be entertained on the ground that the Court proceeded on wrong proposition of law, though wrong decision can be subject to appeal.

9. Review jurisdiction is to be exercised sparingly and can never be used as a tool to re-agitate or re-argue the matters which stand conclusively decided by the Courts (**(2018) 8 SCC 320, Kamlesh Verma Vs. Mayawati and others**). An order need not be reviewed unless there is material error,



manifest on the face of the order which undermines its soundness or results in miscarriage of justice (*See Col. Avtar Singh Sekhon Vs. Union of India and others 1980 (Supp) SCC 562*, para 12). In a leading judgment in case of *Lily Thomas Vs. Union of India (AIR 2000 SC 1650)*, the Supreme Court has laid down that review can only be exercised for correction of a mistake and not to substitute a view. The Supreme Court has reiterated the principle that review cannot be treated like an appeal in disguise.

10. Order 47 Rule 1 of the Code of Civil Procedure, 1908 propounds the grounds for review of an order. An error apparent on the face of record is certainly a ground for review. However, an error apparent on the face of the record would mean an error which can be seen by perusal of records, without undertaking any long reasoning, which is not the situation in the present case.

11. In view of well accepted and underlying principles of review of a judgment as discussed above, in my opinion, no case for review of the judgment dated 06.04.2016 passed in Second Appeal No. 8 of 2014 is made out.

12. This review application is, accordingly, dismissed.



13. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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