

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**REVP No. 57 of 2018**

- Kalaram S/o Najar Sahu, Aged About 61 Years R/o Village Leelapur, Tahsil Lormi, District Mungeli Chhattisgarh.,

---- Appellants**Versus**

1. Shriti Kirti Bai Wd/o Late Shatrughan Aged About 77 Years Caste - Brahmin, Presently R/o Mahamaee Ward Gopiband Para, Pandariya, Tahsil Pandariya, District Kabirdham, District Kabirdham, Agriculturist, Permanent Address Village Leelapur, Tahsil Lormi, District Mungeli Chhattisgarh.,
2. State Of Chhattisgarh, Through The Collector, District Mungeli Chhattisgarh.,

---- Respondents

For petitioner	:	Shri Akhilesh Kumar, Adv.
For Respondent No.2/State:		Shri Anant Bajpai, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****04.09.2018**

1. This review petition has been preferred under Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) questioning the propriety of the order dated 05.04.2018 passed by this Court in Second Appeal No. 548/2013, by which, the appeal preferred by the applicant – Kalaram has been dismissed at motion hearing stage itself.
2. Shri Akhilesh Kumar, learned counsel for the applicant submits that while passing the order impugned, the Court has committed an illegality in dismissing the appeal without framing any substantial question of law under Section 100 of the CPC. It is submitted by him that at the time of consideration of the said appeal, one application, which was filed for amendment in the memo of appeal

raising certain additional grounds and additional questions of law, was not brought to the notice of the Court, as a result of which, an error apparent on the face of the record has occurred. He submits further that the dispute was only in relation to one acre of land, however, the Courts below have granted a decree in relation to 1.73 acres of land. He, therefore, submits that the order impugned deserves to be reviewed.

3. I have heard learned counsel for the applicant and perused the entire record carefully.

4. A suit for possession and damages to the tune of Rs.10,080/- was filed by the plaintiff Shriti Kirti Bai on the ground that the suit property bearing Kh.No. 7/2 (8/1) admeasuring 1.73 acres was originally held by her husband Shatrughan Prasad and after his death, it was recorded in her name and also her daughter's name. Perusal of the record would show further that when the plaintiff has been dispossessed from the alleged suit property, a claim as such was made. The said claim was contested by the applicant (defendant No.1 Kalaram) on the ground that, in fact, he is in possession for one acre of the said suit land on the strength of the agreement to sell, purported to have been executed by the plaintiff's husband Shatrughan Prasad. Therefore, the claim preferred by the plaintiff deserves to be dismissed.

5. After considering the pleadings of the parties, the trial Court, while considering the issue No.1, has held that the plaintiff is entitled to obtain the possession with regard to the suit land bearing Kh.No. 7/2 (8/1) admeasuring 1.73 acres from the applicant/defendant No.1.

6. Being aggrieved with the aforesaid finding, an appeal was preferred by the applicant. After considering the said appeal, it was dismissed holding that the plaintiff is entitled to obtain the possession of the suit land from the

applicant/defendant No.1, as held by the trial Court.

7. The aforesaid finding of the appellate Court was questioned by the applicant before this Court in appeal under Section 100 of the CPC, registered as S.A.No.548/2013. After hearing the counsel for the appellant and that by considering all the grounds, it was found that no substantial question of law arises for determination. As a consequence of it, this Court has dismissed the said appeal. At this juncture, the principles laid down in the matter of ***Santosh Hazari vs. Purushottam Tiwari (Deceased) By Lrs.***, reported in **(2001) 3 SCC 179** are to be noted where at paragraph 15, it has been observed as under:-

“15. We need only remind the first appellate courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate court continues, as before, to be a final court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate court is also a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law be a substantial one.”

8. Based upon aforesaid facts and circumstances of the case and that by taking note of the aforesaid principles, I do not find any error which is apparent on the face of the record so as to warrant any interference in the order impugned while exercising the review jurisdiction under Order 47 Rule 1 of the CPC.

9. The review petition is accordingly dismissed. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge