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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RA-RS-123-C-2015 (O&M) IN
RSA-1604-2012
Date of decision : 17.01.2018

Avtar Singh and others

... Appellant(s)

Versus

Darshan Singh and others

... Review applicant/respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Sharma, Advocates
for the review applicant/respondent(s).

Mr. M.L. Saggar, Senior Advocate with
Ms. Armaan Saggar, Advocate
for the non-applicant/appellant(s).

AMIT RAWAL, J. (ORAL)

This Court vide order dated 05.12.2015 allowed the regular second appeal bearing **RSA No.1604 of 2012** titled as **“Avtar Singh and others V/s Darshan Singh and others”** filed at the instance of the appellant(s)-plaintiff(s) on the basis of the pleadings and documentary evidence brought on record by the respective parties, whereby the judgment and decree of the lower Appellate Court has been set aside and that of trial Court was restored, in essence, the suit seeking following relief was decreed:-

"Suit for declaration to the effect that the plaintiffs are the joint owners upto themselves of the land measuring 15K-15M compromised of Khatas No.45/47, 47/1, 48, Khasra

No.24/18/2, 22/3, 23, 24, 251, 40/3/2/2, 4.39/5/2/2, 40/1/1/1, 40//1/2, 2/1 vide jamabandi of urs, 1995/96 situated at vill. Jangrap, HB No.423, Tehsil and District Ludhiana to the exclusion of defendants for declaration to effect that the alleged sale deeds of the sai suit land viz;

a) Sale deed dated 2/1/96, regd vide vasika No.895, d. 2/1/96, regd. With jt. Sub Registrar, Mullanpur Dakha by the defendant No.4 in favour of the defendant No.2, and

b) Sale deed dt. 13.8.91, regd. Vide vasika No.9999 same day with Sub Registrar, Ludhiana by the deceased Nirmal Singh s/o Arjan Singh in favour of defendant No.3 (Ujagar Singh).

AND

c) Sale deeds vasika No.25035 dt. 27.3.92 regd. With Sub Registrar, Ludhiana allegedly executed by the defendant No.9 Gurdial Singh @ Hardial Singh in favour of the defendant No.1 are null and void, inoperative, not binding on the legal rights of the plaintiffs in the suit land, does not convey and right, title or interest in favour of the buyers as the sale deeds have been executed on the basis of wrong entry in the revenue records by the sellers and fard badar as there was no clerical mistake and hence are liable to be set aside.

AND

For delivery of possession of the said land measuring 15 K-5M to plaintiffs.

AND

For permanent injunction restraining the defendant from in any manner illegally and forcibly, except in due course of law, either themselves or themselves or through their agents, servants, attorneys, relations etc. alienation the said land of any part thereof to anyone, by any mode, including sale, gifts, lease, let exchange, transfer, etc. on the basis and documentary evidence."

The applicant/respondent(s) had filed the review application bearing No.RA-RS-123-C-2015 on the premise that there was a error apparent on record by raising the following grounds:-

"3. That the appellants mislead this Hon'ble Court and concealed the real facts that mutation No.5150 in terms of order dated 25.07.1967 of Sh. Mela Singh Consolidation Officer was sanctioned vide order dated 29.05.1978 in favour of Arjan Singh as per Ex.P-2. Against this mutation, Gurdial Singh did not file any appeal and the said mutation become final. But in the whole case of the appellants it has been stated that the mutation applied by Arjan Singh was dismissed. The applicants/respondent Nos.1 to 3 have also been denied in their written statements in para No.3 that mutation applied by Arjan Singh was not dismissed.

4. That it is the admitted case of the appellants/plaintiffs that on the basis of compromise executed before the Hon'ble High Court, the matter was remanded to the Consolidation Officer and the Consolidation Officer vide order dated 25.07.1967, held that the the parties are entitled to the land measuring 12 kanal 4 marlas in favour of Arjan Singh and the balance ancestral land was held in the ownership of the appellants/plaintiffs.

5. That it is wrong that Arjan Singh applied for mutation of the above-mentioned land on the basis of order dated 25.07.1967 and the same was dismissed vide order dated 29.05.1978 by A.C. Grade-I.

6. That once the matter has been compromised earlier in this Hon'ble Court and this fact has been admitted by the appellants/plaintiffs in their plaint as well as before this Hon'ble High Court that Arjan Singh is entitled the land measuring 12 kanal 4 marla then they cannot go beyond their admission.

7. *That the mutation was sanctioned in the year 1978, the plaintiffs/appellants did not file any appeal or suit against said mutation. Then Fard Badar in 1991 and sale deed also in 1991, the appellants/plaintiffs did not file the suit against this within stipulated period of limitation but filed the suit in 1990 beyond the limitation.*

These facts have been completely overlooked by this Hon'ble Court as well as by the ld. Trial Court and therefore, the judgment dated 05.12.2015 is liable to be reviewed on this fact alone."

On the basis of the aforementioned averments, this Court vide order dated 29.02.2016 issued notice of the review application and in the meantime, the implementation of the judgment of this Court was ordered to be kept in abeyance.

The genesis of the review application is based upon the mutation dated 29.05.1978 (Annexure A-2) which has now been objected to by Mr. M.L. Saggar, learned Senior Counsel assisted by Ms. Armaan Saggar, learned counsel in his reply by pointing out that the mutation (Annexure A-2) sought to be placed on record by way of application bearing CM No.841-C-2018, is not the part and parcel of the record of the Courts below, wherein, column No.9 had intentionally been kept blank, whereas, as per mutation (Annexure A-1) placed on record along with the reply on behalf of the non-applicant/appellants, under column No.9, half share has been shown in favour of Gurdail Singh s/o Uttam Singh, thus, an attempt to mislead the Court by placing on record Annexure A-2, mutation dated 29.05.1978 and Annexure A-3, order dated 22.04.1966 passed in RSA No.669 of 1958, had been made.

This Court called upon Mr. Vikas Sharma to apprise the Court

as to whether the documents (Annexures A-2 and A-3) were the part and parcel of the record of the Courts below and the answer was in "Negative". The scope of review by exercising the powers under Section 114 and Order 47 CPC is no longer *res integra*. Hon'ble Supreme Court in "**Tamilnadu Terminated Full Time Temporary LIC Employees Association Vs. S.K. Roy, The Chairman, Life Insurance Corporation of India and another**" **2016 (9) SCC 366** has laid down certain principles for entertaining the review application. For the sake of brevity, the relevant paragraph of the judgment reads as under:-

*"Review is not re-hearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to re-open concluded adjudications. This Court, in **Jain Studios Ltd. v. Shin Satellite Public Co. Ltd. (2006) 5 SCC 501**, held as under:*

11. So far as the grievance of the applicant on merits is concerned, the Learned Counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases."

When this Court was going to dismiss the review application by imposing exemplary cost, learned counsel for the review application/ respondents has sought permission of the Court for withdrawal of the review application.

Without commenting further upon the conduct of the review applicant/respondent(s), the present review application is ordered to be dismissed as withdrawn.

17.01.2018 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No