

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.79 of 2017

In
SECOND APPEAL No.105 of 2014

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Birendra Yadav, Son of Late Ram Bahadur Yadav, Resident of Village-
Thathopur, Tole-Aadavan, P.S.-Baheri, District-Darbhangha.

... .. (Appellant No.4)...Petitioner

Versus

1. Ram Rekha Devi, W/o Chandeshwar Yadav, Resident of Village-Fatlaha,
P.O.-Jarso, P.S.-Bahera, District-Darbhangha.
... ..(Respondent 1st Set)... Opposite 1st Party
2. Smt. Ram Phool Devi @ Ram Full Devi W/o Sri Surendra Yadav Resident
of Village-Habidih, Tole-Matharahi, P.S.-Baheri, District-Darbhangha.
... ..(Respondent 2nd Set)... Opposite 2nd Party
3. Tula Devi D/o Late Pitamber Yadav, W/o Sri Ram Bilash Yadav Resident of
Village-Mattarahi, P.S.-Baheri, District-Darbhangha.
4. Manoranjan Kumar Yadav
5. Niranjan Kumar Yadav Both Sons Late Pitamber Yadav
6. Surendra Yadav, S/o of Late Ram Bahadur Yadav,
7. Rekha Devi W/o Late Upendra Yadav ,
8. Anil Ranjan @ Amit Ranjan @ Anit Ranjan
9. Lalan Kumar, Both Sons of Late Upendra Yadav,
10. Ajay Ranjan,
11. Sourav Kumar, Both Minor Sons of Late Upendra Yadav, Now Both under
the guardianship of their mother Rekha Devi All Sl. Nos. 5 to 11 are
residents of Village-Thathopur, Tole Aadavan, P.S.-Baheri, District-
Darbhanga.
12. Renu Devi (daughter of Late Upendra Yadav) W/o Ram Sagar Rai, Resident
of Village-Ratanpur-Madhopur, P.S.-Warisnagar, District-Samastipur
13. Runa Devi (daughter of Late Upendra Yadav) W/o Vijay Kumar Rai,
Resident of Village-Niyam Gorahari, P.S.-Hayaghat, District-Datbhanga.

... .. (Appellants)... Opposite 3rd Party

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Appearance :

For the Petitioner/s : Mr. Bishwanath Prasad Singh, Advocate
For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 28-02-2019

Heard the learned counsel for the petitioner.

The petitioner has filed this civil review to review the



judgment and order dated 28.09.2016, passed in Second Appeal No.105 of 2014 by which this Court dismissed the second appeal finding no substantial question of law, which is *sine qua non* for hearing the second appeal.

The learned counsel for the petitioner submits that the petitioner filed S.L.A. (C) No (s). 2603/2017 but the S.L.A. was dismissed with liberty to the petitioner to file review petition before the High Court and thereafter the petitioner filed this review petition. It is submitted that the petitioner in the second appeal has taken ground that the plaintiff did not take pleadings regarding the alleged fraud in consonance with Order VI Rule 4 read with Form 21 of the CPC. It is further submitted that this Court has failed to consider the substantial question of law whether in a case where execution of the sale deed is admitted before the Sub-Registrar, can such sale deed be held to be without consideration and be obtained by practicing fraud and misrepresentation. It is further submitted that the story of oral relinquishment has no value in the eyes of law but the Court did not consider these aspects while dismissing the second appeal. It is submitted that since the petitioner moved before the Hon'ble Supreme Court and, therefore, 125 days delay is caused in filing this civil review petition and for condonation of delay I.A. No.5115 of 2017 is filed.



Having considered the submissions of the learned counsel for the petitioner and on consideration of the facts that whether the judgment and order dated 28.09.2016, passed in Second Appeal No.105 of 2014 requires review on the ground as stated by the learned counsel for the petitioner, Order XLVII Rule 1, which provides for the review of a judgment and decree reads as follows:-

“1. Application for review of judgment.-(1)

Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the fact of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when,



being respondent, he can present to the Appellate Court the case on which he applies for the review.”

On bare perusal of the aforesaid provisions, it is evident that the review can be sought for by a party, who from the discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made or on account of some mistake or error apparent on the face of the record or for any other sufficient reasons desires to obtain review of the decree passed or order made against him may apply for review of judgment to the Court which passed the decree or made the order.

From the submissions of the learned counsel for the petitioner, none of the grounds is put forth, which is necessary for review of the order as contained in Order XLVII. Learned counsel for the petitioner seeks review of the order on the ground that he had taken the grounds that the plaintiff did not plead in the plaint as required under Order VI Rule 4 about the fraud played in execution of the sale deed and once the sale deed is admitted before the Sub-Registrar, the same cannot be held to be without consideration or on account of concealment of facts and playing fraud but I find no substance in the submissions of the learned counsel for the petitioner. The petitioner also canvassed his submissions at the time of hearing of the second appeal and this



Court very categorically found that in view of the admission of the defendant-appellant, who happens to be one of the daughter of the plaintiff, that she and her sister, both daughters of the plaintiff relinquished the property in favour of their mother and admittedly thereafter the defendant-2nd Set, Smt. Ram Phool Devi, one of the daughters of the plaintiff, is said to have executed the sale deed along with her mother in favour of defendants-1st Set. The defendant admitted this fact that the plaintiff was the sole owner of the suit property and her two daughters had relinquished their share in favour of the plaintiff. There is a concurrent finding of both the Courts that the sale deed dated 12.11.1993 is forged and fabricated document of sale for which even no consideration was established to have been paid to the plaintiff.

In this view of the facts, I do not find any ground for review of the judgment and order dated 28.09.2016. Accordingly, the limitation petition (I.A. No.5115 of 2017) along with present civil review petition is dismissed.

(Prabhat Kumar Jha, J)

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