

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.350 of 2017

In
SECOND APPEAL No.209 of 2014

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Dr. Ramchandra Prasad Gupta son of Late Ramji Prasad Gupta, Resident of Mahangilal Ki Gali, Trigun Dehri, P.S. and P.O.- Dehri-on-Sone, District-Rohtas.

... .. Petitioner/s

Versus

1. Dr. Mahendra Prasad Gupta Son of Late Ramji Prasad Gupta, Resident of Mahangilal Ki Gali, Trigun Dehri, P.S. and P.O.- Dehri-on-Sone, District-Rohtas.
2. Dr. Surendra Prasad Gupta, Son of Late Ramji Prasad Gupta, Resident of Trigun Dehri More, P.S. and P.O.- Dehri-on-Sone, District- Rohtas.
3. Mosmat Shakuntala, Wife of Late Dr. Vishwanath Prasad Gupta,
4. Om Prakash Gupta, Son of Late Dr. Vishwanath Prasad Gupta, Both 3 and 4 Resident of Mohalla- Barah Pathar, Post Office and Police Station- Dehri-on-Sone, District- Rohtas.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Pandey No-5
For the Opposite Party/s : Mr.Surendra Kumar Mishra

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 22-07-2019

Heard both sides.

(2) The petitioner-appellant has filed this petition for review of the order dated 27.02.2017 passed in Second Appeal No.209 of 2014 by which the Second Appeal was dismissed as no any substantial question of law is arising for consideration in the Second Appeal.

(3) The brief facts relevant for decision of this case is that Dr. Mahendra Prasad Gupta, O.P. No.1-plaintiff filed eviction



suit on the premises that Dr. Ramji Prasad Gupta got four sons namely, Dr. Vishwanath Prasad Gupta, Dr. Ramchandra Prasad Gupta(petitioner-defendant 1st set), Dr. Surendra Prasad Gupta and Dr. Mahendra Prasad Gupta(plaintiff-O.P. No.1) and there was mutual partition in the year 1983. The suit land fell in the share of Dr. Mahendra Prasad Gupta but he allowed the petitioner to remain in the suit premises. Defendant 1st set-petitioner contested the suit that there was no partition among the four brothers and he is not the tenant. Other two brothers-defendants 2nd set also filed written statement denying the factum of partition among the four brothers. Learned Munsif dismissed the suit by recording a finding that there is no cogent evidence of partition among the brothers and petitioner-defendant 1st set is residing in the suit premises as a coparcener. On appeal, the first appellate court reversed the findings of the trial court holding that there was partition. The petitioner preferred Second Appeal No.209 of 2014 and this Court dismissed the Second Appeal recording the finding that no any substantial question of law arises for consideration in this appeal. The petitioner filed S.L.A.(C) No.19198 of 2017 before the Supreme Court which was disposed of by order dated 08.08.2017 which reads as follows:

“It is submitted by the learned counsel for the petitioner that the High Court has recorded a finding against the petitioner



without taking note of the fact that he has filed a suit for partition in respect of the self same property.

In view of the aforesaid, we permit the petitioner to file an application for review before the High Court within four weeks hence. On filing of such an application for review, the same shall be addressed to on its own merits and not be thrown at the threshold on the ground of limitation. If the petitioner does not succeed in review, liberty is granted to challenge the main(impugned) order as well as the order passed in review by way of a fresh special leave petition.

The special leave petition stands disposed of accordingly.”

(4) In the light of the liberty aforesaid, the petitioner filed this petition. On the basis of the submission of both sides, the only question arises for consideration “whether the order dated 27.02.2017 passed in Second Appeal No.209 of 2014 requires to be reviewed?”

(5) Learned counsel for the petitioner submits that Dr. Mahendra Prasad Gupta filed Title Suit No.8 of 2007 stating that there was partition between four brothers, all sons of Dr. Ramji Prasad Gupta and stated that the suit premises fell in his share and petitioner has been residing in the suit premises on his permission. It is further submitted that petitioner denied claim of partition among the four brothers. Other two brothers who are also made defendants 2nd set denied the factum of partition among the brothers and asserted that the house mentioned in Schedule (Ka) and the portion of the house mentioned in Schedule (Ga) never fell in the share of the plaintiff. It is further submitted that during the



course of argument in Second Appeal, the petitioner could not bring the facts to the notice of the Court that the petitioner filed Title(Partition) Suit No.546 of 2008 on 27.08.2008 for partition of the entire ancestral properties including the suit premises. Plaintiff appeared in the partition suit. It is further submitted that Dr. Mahendra Prasad Gupta also admitted this fact in his deposition that partition suit is pending among the four brothers for partition of the entire ancestral properties. Therefore, the order dated 27.02.2017 requires to be reviewed.

(6) Mr. T.N.Maitin, learned senior counsel appearing on behalf of opposite party No.1 submits that scope of review is very narrow and limited. In review, the case cannot be heard on merit. Citing the judgment reported in **(1997) 8 Supreme Court Cases 715** and relying on para 9, Mr. Maitin submits that under Order 47 Rule 1 C.P.C., a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 rule 1 C.P.C. In exercise of the jurisdiction under Order 47 Rule 1 C.P.C. it is not permissible for an erroneous decision to be “reheard and corrected”. A review



petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise”.

(7) Mr. Maitin citing Full Bench judgment of this Court, **2015(4) PLJR 328**(The High Court of Judicature at Patna through the Registrar General vs. Sri K.K.Chaubey) and relying on para 15 of the aforesaid judgment submits that “the Court must remain mindful of the basic principle of review that a review is not a rehearing of a matter on merits and cannot be lightly entertained by the Court. It is further submitted that “a review of a judgment is a serious step and reluctant resort to it is proper, only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.” It is further submitted that Hon’ble Supreme Court did not hear the opposite party in Special Leave to Appeal and on mere submission of the petitioner-appellant about the pendency of the suit for partition in respect of the self-property, the opportunity was given to the petitioner to file review. The order does not mean that this Court by resorting to the power of review shall hear the case on merit.

(8) Having considered the submission of both sides, I would like to reproduce Order 47 Rule 1 C.P.C. which 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 face 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.”

(9) From bare perusal of the provisions, it is evident that the order can be reviewed if there is an apparent error on record or on discovery of new and important matter or evidence. From the facts of the present case, it is apparent and crystal clear that none else than the own brother of the petitioner filed the suit for eviction stating that the petitioner remained in his permissive possession over the suit land after the partition among the four brothers in the year 1983. The petitioner and his two brothers who are defendants denied the factum of any partition of ancestral property including the property acquired by their fathers. Immediately after filing the eviction suit, the petitioner filed the Title(Partition) Suit No.546 of 2008 and O.P. No.1 and other brothers of the petitioner also appeared in the partition suit and filed written statement. The pendency of the partition suit with regard to entire ancestral



property including the suit premises would not be brought to the notice of the Court although the plaintiff admitted in his evidence about the pendency of partition suit of all the ancestral properties including the suit premises and I find that this fact that the partition suit for partition of the entire properties including the suit property is very important and has got bearing on the merit of appeal. The parties are coparceners of the first degree and there is a strong presumption of their jointness. In absence of such coherent and cogent evidence with regard to partition among the brothers, I find that the order dated 27.02.2017 requires to be reviewed in the interest of justice and to prevent miscarriage of justice. Consequently, the order dated 27.02.2017 is reviewed and recalled. Let the Second Appeal be placed under the heading for hearing under Order 41 Rule 11 C.P.C.

(10) Accordingly, this civil review petition is allowed.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
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