

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.507 of 2017

In
Letters Patent Appeal No.2117 of 2015

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Gaya Singh son of late Sakaldeo Singh, R/o village- Bishunpur, Taraura, P.s.
and Anchal- Mahua, District- Vaishali Petitioner

Versus

1. Rajgiri Singh son of late Ram Vinay Singh
2. Ram Bachchan Singh son of late Harnandan Singh
both R/o village- Bishunpur Tararura, P.s.- Mahua, District- Vaishali
3. The State of Bihar through Chief Secretary, Govt. of Bihar, Old Secretariat
Building, Patna
4. The Joint Director, Consolidation, Muzaffarpur
5. The Amarsh Singh
6. Ganesh Singh
both sons of Chandrika Singh
7. Yogmaya Kuer wife of Chandrika Singh
8. Gita Kuer
9. Nirmala Devi
10. Gayatri Devi
11. Girja Devi
all D/o of late Chandrika Singh
12. Ravindra Singh
13. Sachindra Singh
both sons of Harnandan Singh
14. Shail Devi
15. Shanti Devi
both d/o of late Harnand Singh
16. Umesh Singh
17. Takeshwar Singh
both sons of late Ramnandan singh
18. Sumitra Devi
19. Manju Devi
20. Baby Devi
all daughters of Late Ram Nandan Singh
21. Pashupati Kuer, widow of late Ram Nandan Singh
all R/o vilalge Bishunpur, Tararura, P.S. and Anchal- Mahua, District-
Vaishali

... .. Opposite Party/s

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Appearance :

For the Petitioner/s :	Mr.Naresh Chandra Verma, Advocate
For the Opposite Party/s :	Mr. Dharmendra Kumar Paswan, Advocate
	Mr.Anand Kumar Ojha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER



(Per:HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

10 24-07-2019 We have heard learned counsel for the review petitioner as well as the appellants in L. P. A. No. 2117 of 2015 who are opposite parties no. 1 and 2 herein as also learned counsel for the State.

This review application has been preferred seeking recall/review of the order dated 24.11.2017 passed in L.P.A. No. 2117 of 2015 passed by Hon'ble Division Bench of this Court in L.P.A. No. 2117 of 2015. The order passed in L.P.A.No. 2117 of 2015 on 24.11.2017 reads as under:

“Heard learned counsel for the appellants and learned counsel appearing for the respondent no. 3.

2. A fair submission has been made by the learned counsel on behalf of the appellant that they are willing to subject themselves to the jurisdiction of the revisional authority and they have no objection to any other parties to the dispute also appearing before the revisional authority placing their case for a fresh adjudication for declaration based on the evidence and materials which may be placed by the parties to the dispute.

3. One reservation which has been expressed by the learned counsel for the appellants that they could be some reflection in the mind of the revisional authority because of the previous adjudication can be taken care of by an observation that the revisional authority will decide the matter afresh only on the materials and evidence which may be produced by the parties who will appear before the revisional authority with their respective evidence. The previous adjudication, to that extent, has lost its meaning in view of the order passed.

4. The appeal stands disposed of with the above observation.

5. It is hoped and expected that the parties to the dispute will appear before the revisional authority



with a copy of this order within a period of four weeks and thereafter the revisional authority will fix a date and do the needful.”

Learned counsel for the review petitioner submits that he had entered appearance on behalf of the respondent no. 3 in the Letters Patent Appeal on 24.11.2017 and prayed for giving a copy of the memo of appeal but the appeal was heard and final order was passed remanding the case to the revisional authority on the submission of the appellant’s counsel. It is further submitted that the submissions of the review petitioner was not considered that the learned Writ Court had decided the case on merit after considering each and every point. One of the grounds raised in the review petition is that while passing the order under review the Hon’ble Division Bench has taken away the adjudications made by the learned writ Court as well as the revisional authority without setting aside those orders. It is being submitted that the order dated 24.11.2017 is fit to be recalled and the Letters Patent Appeal be heard on its own merit in the interest of justice.

Learned counsel representing the opposite parties no. 1 and 2 who were the appellants in the Letters Patent Appeal has defended the order dated 24.11.2017 by submitting that the order has been passed only after hearing both the parties and in the nature of the order passed, now the review petitioner cannot take a plea that he was not heard as there will be a presumption of



correctness of the record of this Court.

Having heard learned counsel for the parties, we find from the records that the Consolidation Revision Case No. 119 of 2004 was passed on 21.04.2010 by the Director of Consolidation by holding that in view of the Civil Court judgment as well as the order passed in Revision Case No. 43 of 2006 it appears that both the parties are co-sharer and they are entitled for half and half share in the entire landed property.

The opposite parties (the review petitioners) did not choose to appear and controvert the contention of the petitioner before the Director of Consolidation. Accordingly, C.O. Mahua was directed to make necessary correction in the revenue records. That order came to be challenged before the learned Writ Court in C.W.J.C. No. 10835 of 2012 in which after hearing the parties the learned Writ Court expressed its inability to accept the submission of writ petitioner and held that the writ petitioner was made party to the said proceeding and was granted adequate opportunity to contest the same. The writ application was thus, dismissed.

After hearing learned counsel for the parties, we are of the considered opinion that the Hon'ble Division Bench has committed an error of record while passing the order dated 24.11.2017 in L.P.A. No. 2117 of 2015 as the Letters Patent Appeal has been disposed of taking note of the submission of the



learned counsel for the appellants alone. Neither the order of the Director, Consolidation nor the judgment of the learned Writ Court was discussed and set aside. In these circumstance, learned counsel for the review petitioner is correct in saying that the learned appellate Court has proceeded to dispose of the Letters Patent Appeal without going into the order passed by the Revisional Authority and the learned Writ Court even as without consideration of the materials available on records effects of the previous adjudications have been taken away.

In the case of **Mt. Jamna Kuer v. Lal Bahadur and others** reported in **AIR 1950 Federal Court 131** it has been held that a party to the litigation should not be allowed to suffer because of mistake of the court and in the interest of justice the Court may in such circumstance exercise its power of review. The relevant part of the judgment in the case of Mt. Jamna Kuer (supra) is quoted hereunder for a ready reference:

“There can be no doubt that this appeal must be allowed. The mistake as to the items of property regarding which Mst. Jamna Kuar had laid claim is apparent on the face of the record. The trial Judge had clearly stated in his judgment that Jamna Kuar's claim related to properties 3 to 37 of the Gazette notification. In paragraph 15 of her amended objection petition she had laid claims to all the properties left by Kunj Behari. On the 29th April, 1942, it was admitted by the pleader of the applicants that all these properties related to the estate of Kunj Behari and that so far as the debtors were concerned, they were owners of only two properties mentioned in the Gazette notification. In this situation it would have been appropriate if the High Court had corrected this error on the review petition and saved the appellant the trouble



and expense of an appeal to the Privy Council or to this Court. Whether the error occurred by reason of the counsel's mistake or it crept in by reason of an oversight on the part of the Court was not a circumstance which could affect the exercise of jurisdiction of the Court to review its decision. We have no doubt that the error was apparent on the face of the record and in our opinion the question as to how the error occurred is not relevant to this enquiry. A mere look at the trial Court's decision indicates the error apart from anything else.”

(underline is mine)

We find that it is a case in which an error apparent on the face of record has occurred.

We therefore, recall our order dated 24.11.2017 and restore L.P.A. No. 2117 of 2015 for a fresh consideration.

This application is allowed.

Let L.P.A. No. 2117 of 2015 be listed before the appropriate Bench on 19th of August, 2019.

(Amreshwar Pratap Sahi, CJ)

(Rajeev Ranjan Prasad, J)

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