NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 473 of 2020

Reserved On : 11.12.2020

Delivered On : 05.02.2021

1. Smt. Bharti Gupta, W/o Late Dr. Vijay Singh Gupta, aged about 73 years.
2. Milind Singh Gupta, S/o Late Dr. Vijay Singh Gupta, aged about 43 years.
3. Skandh Singh Gupta, S/o Late Dr. Vijay Singh Gupta, aged about 41 years.

All through power of attorney holder Milind Singh Gupta, S/o Late Dr. Vijay Singh Gupta, R/o Kachhari Road, Behind Old Police Station, Aapapara, Durg, Tahsil and District- Durg (C.G.)

--- Petitioners

Versus

Dr. Smt. Sonali Tanwar, D/o Late Ajit Singh Gupta & W/o Dr. Mohit Tanwar, aged about 51 years, R/o A-32, Cross Street No. 5, Smriti Nagar, Junwani, Bhilai, Tahsil and District- Durg (C.G.)

--- Respondents

For Petitioners	:	Mr. B. P. Sharma, Advocate with Mr. P.R. Patankar, Mr. M.L. Sakat & Ms. Anuja Sharma, Advocates.
For Respondent	:	Mr. Kishore Bhaduri, Advocate, Mr. Sabyasachi Bhaduri, Mr. Chetan Singh Chauhan, Advocate, Mr. Bhavar Lal Parakh, Advocate, Mr. Prashant Gupta, Advocate & Mr. Ashish Surana, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV ORDER

1. This writ petition has been brought praying for invoking power under Article 227 of the Constitution of India seeking indulgence of this Court to quash the order dated 21.10.2020 passed by the Board of Revenue, the revenue order dated 11.06.2020 (Annexure P/3) and the order dated 16.07.2020 (Annexure P/5) passed by Commissioner, Durg Division, Durg and also to restore the matter before Commissioner, Durg Division, Durg, giving direction to decide the matter on merits, in accordance with Section 49 (3) of the Chhattisgarh Land Revenue Code, 1959.

2. The facts of this case, in brief, is this that, there is dispute with respect to land bearing Khasra No. 9/1 admeasuring 5.946 Hectare, situated at Borsi, Patwari Halka No. 23, Tahsil & District- Durg. On an application filed by the petitioners, the Tahsildar, Durg, recorded names of petitioner No. 1, her husband- Dr. Vijay Singh, son Milind Singh Gupta & another son Skandha Singh Gupta, mentioning their shares in partition. The respondent then, preferred an appeal in the court of Sub Divisional Officer (Revenue), Durg, but the same was dismissed vide order dated 15.11.2019. The respondent again preferred second appeal before Commissioner Durg Division under Section 44 (2) of the Chhattisgarh Land Revenue Code, 1959 (for short “the Code, 1959”). Her appeal was allowed and the Commissioner has passed order dated 11.06.2020 directing the

Tahsildar to delete the names of the petitioners and record the name of the respondent in the revenue record. The petitioners then, filed a review petition before Commissioner, Durg Division. The review petition was allowed vide order dated 16.07.2020 and the Commissioner, Durg Division, has passed separate order on the same day by allowing the appeal and directing the court of Tahsildar Durg, to give opportunity of hearing to the parties and pass orders in accordance with law by taking into consideration the registered sale deed in favour of the respondent dated 18.04.1970.

3. It is submitted by learned counsel for the petitioners, that the order in review petition dated 11.06.2020 by Commissioner Durg Division, was challenged before the Board of Revenue, in revision petition, but the same has been dismissed vide order dated 21.10.2020. It is submitted that the order dated 11.06.2020 of remand made by the Commissioner, Durg Division, is illegal. While exercising the appellate powers, the Commissioner cannot go beyond the powers vested in it under Section 49 of the Code, 1959. The proviso to sub-Section 3 of Section 49 of the Code, 1959, very clearly provides that the appellate authority shall not remand the case for disposal by any Revenue Officer subordinate to it.

4. It is further submitted that the review petition that was filed by the petitioners, was with a prayer that the appeal be heard on merits and decided in accordance with law. The procedure for review under the C.P.C. is provided under Order 47 of the C.P.C. The

procedure for hearing a review petition was not followed. It is provided under Rule 8 of Order 47 of the C.P.C. that when an application for review is granted, a note thereof is to be made in the register and the Court may at once re-hear the case or make such order in regard to re-hearing as it thinks fit. Thus, it, is not necessary that the Court has to re-hear the case immediately on granting the application for review. Rule 8 saves the power of the Court to make such order with regard to the re-hearing as it may think fit. On 16.07.2020, the review petition filed by the petitioners was decided at motion stage.

5. Learned counsel for the petitioners has placed reliance on judgment of the Supreme Court in the matter of **Zuari Cement Limited** Vs. **Regional Director, Employees' State Insurance Corporation, Hyderabad & Others**, reported in **(2015) 7 SCC 690**, wherein, it has been observed that the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. In this case, the Commissioner, Durg Division was not empowered to remand the case to Tahsildar, Durg. He also placed reliance on judgment of the Supreme Court in the matter of **Shiv Kumar Chadha** Vs. **Municipal Corporation of Delhi & others**, reported in **(1993) 3 SCC 161**.

6. It is submitted that the order dated **18.11.2020** passed by the Coordinate Bench of this Court in **Second Appeal No. 410 of 2007**, (**Sanjay Kumar Soni & another** Vs. **Janak Lal Soni & others)**, it has been observed that the first appellate court is 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. Therefore, the second appeal and the review petition have not been properly and legally decided by the Commissioner, Durg Division. Hence, the order of the Commissioner, Durg Division and the orders passed by the Board of Revenue, are not sustainable.

7. On the other hand, learned counsel for the respondent opposes the submissions made by learned counsel for the petitioners and submits that the disputed land originally belonged to Bahadur Singh Gupta, which was purchased by Late Balaram Sharma by registered sale deed and the same was mutated in his name in the revenue records. Late Balaram Sharma had given the disputed land on temporary lease for three years to petitioner No. 1 on which basis, the land was mutated in her name, whereas, the property was sold by Balaram Sharma to Nalini Gupta, who is the respondent herein.

8. It is submitted that without any entitlement, Civil Suit No. 03-A/2013 was filed by Vijay Singh Gupta and his sons against petitioner No. 1 before the trial court, seeking relief of declaration of title on the basis of oral partition. The civil suit was dismissed by the trial court. It is further submitted that suppressing the

outcome of civil litigation, the petitioners filed application before Tahsildar Durg for mutation entries, on which basis, order dated 09.03.2017 was passed by Tahsildar, which has been subjected to challenge by the respondent continuously and persistently.

9. It is submitted that the Commissioner, Durg Division has committed no error in passing the order dated 11.06.2020 in favour of the respondent and also the review order passed on 16.07.2020. The review powers are exercised under Section 51 of the Code, 1959. The statement of the petitioners side that this power should have been exercised under Section 49 of the Code, 1959, is not correct, because Section 49 of the Code, 1959 speaks about powers of appellate authority and while exercising the power as appellate court, proviso to sub-Section 3 of Section 49 of the Code, 1959 may be applicable, but the same shall not be the case while exercising review jurisdiction under Section 51 of the Code, 1959.

10. It is submitted that in case of **Mangalu Sahu & another Vs. The Board of Revenue & others**, **[Writ Petition (Art. 227) No. 363 of 2014**, **decided on 10.02.2017]**, the Court has observed in paragraph 5 of the order, that the order of remand by a review appellate court, if not challenged, is maintainable. The Board of Revenue has correctly observed in the order dated 21.10.2020 that before passing any order, it was necessary for the review court to take into consideration the sale deed dated 18.04.1970 in favour of the respondent. Therefore, the case is present in favour of the respondent, she being the rightful owner of the

disputed property. Hence, the order of the Commissioner, Durg Division and the order of Board of Revenue, are sustainable, which need no interference of this Court.

11. In reply, learned counsel for the petitioners submits that the petitioners are before this Court only to seek remedy directing the Commissioner Durg Division to follow the procedure, therefore, there is no necessity to go into the merits of the case, hence, it is prayed that relief may be granted in favour of the petitioners.

12. I have heard the learned counsel for the parties and perused the documents placed on record.

13. The order of Commissioner, Durg dated 16.07.2020 has been assailed on two grounds. Firstly, that the procedure of review as provided under Order 47 of the C.P.C., was not followed and secondly, that the Commissioner, Durg was not empowered to remand the case according to proviso to Section 49 (3) of the Code, 1959.

14. The present situation in this case is this, that subsequent to the order in review petition dated 16.07.2020 and dismissal of the revision petition by the Revenue Board dated 21.10.2020, the court of Tahsildar Durg, District- Durg, has proceeded to comply with the order and on completion of the proceeding, has passed the order dated 06.11.2020, by which, it has been ordered that the property in question be recorded in the name of the respondent. However, this order has been stayed by the

Tahsildar by a separate order dated 07.11.2020 on the application filed by the petitioner praying for grant of time to file appeal before Sub-Divisional Officer.

15. Section 51 of the Code, 1959 is as follows:-

> "**51. Review of orders.** - (1) The Board and every Revenue Officer may, either on its/his own motion or on the application of any party interested review any order passed by itself/himself or by any of its/his predecessors in office and pass such order in reference thereto as it/he thinks fit :
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> Provided that-
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> (i) if the Commissioner, Settlement Commissioner, Collector or Settlement Officer thinks it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the Board, and if an officer subordinate to a Collector or Settlement Officer proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction in writing of the authority to whom he is immediately subordinate;
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> (i-a) no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order;
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> (ii) no order from which an appeal has been made, or which is the subject of any revision proceedings shall, so long as such appeal or proceedings are pending be reviewed;
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> (iii) no order affecting any question of right between private persons shall be reviewed except

> on the application of a party to the proceedings, and no application for the review of such order shall be entertained unless it is made within ninety days from the passing of the order.
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> (2) No order shall be reviewed except on the grounds provided for in the Code of Civil Procedure, 1908 (V of 1908).
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> (3) For the purposes of this section the Collector shall be deemed to be the successor in office of any Revenue Officer who has left the district or who has ceased to exercise powers as a Revenue Officer and to whom there is no successor in the district.
>
> (4) An order which has been dealt with in appeal or on revision shall not be reviewed by any Revenue Officer subordinate to the appellate or revisional authority."

16. Section 51 of the Code, 1959 only provides for power of court by revenue court unlike civil court. Revenue courts are also vested with inherent powers under Section 32 of the Code, 1959 and at the same time Section 43 of the Code, 1959 provides that unless otherwise expressly provided in this Code, the procedure laid down in the Code of Civil Procedure, 1908 shall, so far as may be followed in all proceedings under this Code. As it is apparent from reading of proviso to Section 51 of the Code, 1959, that this proviso is only to empower the revenue court, to review the order passed by it and the procedure as to in what manner, the order, shall be reviewed, has not been provided. Therefore, in such a case, this provision under Section 43 of the Code, 1959

comes into play, then, the procedure for review, shall be in accordance with the Order 47 of the C.P.C.

17. Order 47 of the C.P.C. provides as follows:-

> "**1. Application for review of judgment.**- (1) Any person considering himself aggrieved-
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> (a) by a decree or order from which an appeal is allowed, but from no appeal has been preferred,
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> (b) by a decree or order from which no appeal is allowed, or
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> (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.
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> (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."

18. Order 47 Rule 4 (2) of the C.P.C. provides for grant of review on

the application filed on the previous order passed according to which, such order cannot be made without previous notice to the opposite party and without opportunity of being heard given to him.

19. Order 47 Rule 8 of the C.P.C. specifically provides for registration of the application for review granted and order for re-hearing and also that the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

20. Annexure- P/5 filed with this petition mentions of the full proceeding of the review. It is mentioned in the order that the review petition was filed on 18.06.2020. After filing of the review petition, the order was also passed to maintain status quo as it was on the date of 11.06.2020, when the previous order was passed by the Commissioner Durg Division. The order mentions that the respondent was given notice and the application was heard on admission on 02.07.2020. The commissioner Durg Division observed in the concluding paragraph of order dated 16.07.2020 that on 11.06.2020, the case was fixed for hearing on the application for condonation of delay under Section 5 of the Limitation Act and after allowing the same, the case was required to fixed for final hearing, but the second appeal was decided on the same date on merits, which was a mistake apparent on the face of record and on that basis, review was granted in favour of the petitioner. It is also mentioned in the order that was passed in the order-sheet, that while hearing the arguments for grant of review, the argument has also been

heard on merits of the appeal. On this basis, separate order was passed on the same date by allowing the appeal and directing the Tahsildar Durg to afford opportunity of hearing to both the parties, examine the documents submitted by both the sides and by taking into consideration the registered sale deed dated 18.04.1970 in favour of the respondent side, pass order in accordance with law.

21. On perusal of the order on the order-sheet dated 16.07.2020 and the separate order on appeal dated 16.07.2020, it would seen that the opposite party had notice of the review application. The review application was heard and decided in favour of the petitioner, in accordance with Order 47 Rule 1 of the C.P.C. and then, the Order 47 Rule 8 of the C.P.C. was also followed, in which, the review court had choice to re-hear the case at once, which was done. As there is no mention of making any entry in the register, that cannot be made a ground to assail the order, because entry in the register is a clerical act and any omission to do so, is not a ground to invalidate the order that has been passed.

22. The dictionary meaning of word 'review' is to examine again the facts of the case. The substantive power of review is mentioned in Section 114 of the C.P.C. whereas, Order 47 of the Code, 1959 provides for limitation under which the review can be made. The word that has been used in Section 114 of the C.P.C. is this that the Court after entertaining the review application, the Court may make such order as it thinks fit.

23. The Supreme Court, in the case of **Haridas Das Vs. Usha Rani Banik (Smt.) & others**, reported in (**2006) 4 SCC 78**, has observed as under:-

> “13. In order to appreciate the scope of a review, Section 114 of the CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the Court since it merely states that it "may make such order thereon as it thinks fit." The parameters are prescribed in Order XLVII of the CPC and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict. This is amply evident from the explanation in Rule 1 of the Order XLVII which states that the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the Court should exercise the power to review its order with the greatest circumspection. This Court in *M/s.*

Thungabhadra Industries Ltd. v. The Govt. of A.P. held as follows:

> "There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error..... where without any elaborate argument one could point to the error and say here is a substantial point of law which states one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out." “

24. In the present case, the second appellate court- Commissioner Durg Division has followed the procedure correctly in accordance with the procedure laid down under Order 47 of the C.P.C. and then, after granting review to the party applying for it, has re-heard the case and decided the same in the impugned order dated 16.07.2020, therefore, I am of the view that no procedural mistake has been committed by Commissioner Durg Division in this case and order was passed in accordance with law and also in accordance with the procedure laid down for the same.

25. The second question raised by the petitioner side stating that the case has been remanded to the court of Tahsildar is not proper. On perusal of the concluding part of the order dated 16.07.2020, it would be seen that the Commissioner Durg had decided the

appeal afresh by allowing the same and directing Tahsildar Durg to make compliance with the order passed in the appeal. This part of the order cannot be deemed or regarded as order of remand. The appeal was decided on merits on all the points of contest between the parties and there is no such direction to the court of Tahsildar, to reconsider and pass order on any of the issues left to be decided between the parties. Hence, the submission from the petitioner side that the impugned order dated 16.07.2020 is an order of remand made by the appellate court, is without any substance, therefore, the impugned order is not a remand within the meaning of proviso to Section 49 (3) of the Code, 1959.

26. In the matter of **Harvilas & others Vs. Smt. Gulabbai (WP No. 3398/2017, Order dated 24.08.2017)**, the High Court of Madhya Pradesh has observed that this proviso under Section 49 (3) was brought in the Code to check the tendency of the appellate authority to remand the matter without adverting to the merits of the case. It is not the similar case here, as the appellate court of Commissioner Durg has completely decided the case before it and on the basis of that, conclusion drawn, has passed the order for compliance of the same. This argument was submitted by the respondent side that the petitioner has acquiesced to the proceeding before Tahsildar Durg and as a result of which, the order of mutation was passed in favour of the respondent on 16.11.2020 by Tahsildar Durg, although the petitioner intends to file appeal against this order before the court of Sub-Divisional

Officer.

27. The ratio laid down in the case of **Sanjay Kumar Soni (supra)**, is not applicable in the present case because second appeal before the revenue authority is not governed by the Code of Civil Procedure. It is specifically provided in Section 49 of the Code, 1959, as to what shall be power of the appellate authority. Hence, in the existence of this provision, Section 43 of the Code, 1959, will not come into play.

28. In the matter of **Mangalu Sahu (supra)**, the Coordinate Bench of this Court observed that the petitioner in the case acquiesced to the proceeding and when they do not get favourable order instead of challenging the same before the appropriate forum, hence, the plea raised in that petition is somersault to get the order against them set aside in the petition, which cannot be permitted.

29. The situation and the circumstances in the present case is also appears to be similar, hence, the second question raised by the petitioner is again answered in negative.

30. On the basis of the discussion made hereinabove and the conclusion drawn, it is held that the present petition is without any substance, which is liable to be dismissed.

31. Accordingly, the instant writ petition is dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Arun