

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.62 of 2021

In
CIVIL MISCELLANEOUS JURISDICTION No.615 of 2019

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Hasan Ahamad Son of Late Tazuddin, Resident of Village-Jhitkiya, Mazrahat tola, Ward no. 04, P.S.-Singheshwae, District-Madhepura.

... .. Petitioner/s

Versus

1. Md. Tafruddin Son of Late Md. Tazuddin, Vill-Mazarhat Tola, Jhitkiya, Ward No.2 P.S.-Singheshwar, Distt-Madhepura.
2. Md. Kaushar, Son of Late Md. Tazuddin, Vill-Mazarhat Tola, Jhitkiya, Ward No.2, P.S.-Singheshwar, Distt-Madhepura.
3. Md. Shamim Son of Late Md. Tazuddin, Vill-Mazarhat Tola, Jhitkiya, Ward No.2, P.S.-Singheshwar, Distt-Madhepura
4. Bibi Firoja Khatoon, Wife of Late Md. Tazuddin, Vill-Mazarhat Tola, Jhitkiya, Ward No.2, P.S.-Singheshwar, Distt.-Madhepura.
5. Begum Sakina, Wife of Ahmad, Vill-Patarghat, Ward no.4, P.S.-Patarghar, Distt.-Saharsha
6. Hasina Praveen, D/o Late Md. Tajuddin, Vill-Mazarhat Tola, Jhitkiya, Ward No.2, P.S.-Singheshwar, Distt-Madhepura.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Ms. Shilpi Keshri, Adv. Mr. Ashok Kr. Keshri, Adv. Mr. Aditya Mishra, Adv.
For the Opposite Party/s :		Mr. Ranjan Kr. Dubey, Adv. Mr. Pawan Kumar, Adv. Mr. Shashank Kashyap, Adv. Mr. Ashish Anand, Adv.

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CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV ORDER

8 25-08-2022 I have already heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

This petition has been filed with a prayer to review the order dated 05.03.2020 passed in Civil Miscellaneous Jurisdiction No. 615 of 2019, whereby that petition was



dismissed as withdrawn.

The brief fact of this case is that respondent nos. 1 to 3 claim to be sons of Mohammad Tazuddin. Respondent no. 4 is wife of Mohammad Tazuddin and respondent nos. 5 and 6 are daughters of Mohammad Tazuddin. They filed Probate Case No.1/2018 before the learned District Judge, Madhepura on 20.02.2018, claiming that Mohammad Tazuddin in his life time executed a registered will deed on 30.05.2016 in favour of respondent nos. 1 to 3. Mohammad Tazuddin, as per averments of respondents, died on 09.06.2016, leaving behind the above-mentioned respondents. In that probate case, the wife and daughters of Mohammad Tazuddin were impleaded as opposite parties and they filed no objection in favour of respondent nos. 1 to 3. It is the case of the petitioner that Madina Khatoon, who is mother of the petitioner, was first wife of Mohammad Tazuddin. The petitioner and his mother filed a petition on 03.10.2018 to implead them in probate case under Order I Rule 10 read with section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code'). The further case of the petitioner and his mother Madina Khatoon is that Mohammad Tazuddin never executed will deed in favour of respondent nos.1 to 3. Mohammad Tazuddin was declared as mentally abnormal by



A.I.I.M.S., New Delhi and he was not capable of executing will deed. The petition filed by Madina Khatoon and the petitioner to implead them as opposite parties in probate case was rejected by the learned court below, vide order dated 07.03.2019. Being aggrieved by that order, Civil Miscellaneous Jurisdiction No.615 of 2019 was filed, which was dismissed as withdrawn, vide order dated 05.03.2020.

Ms. Shilpi Keshri, the learned counsel for the petitioner has submitted that the learned trial court rejected the petition of impleadment of the petitioner and his mother, mentioning therein that the mother of the petitioner Madina Khatoon had filed a maintenance case against her husband Mohammad Tazuddin, which was numbered as Maintenance Case No.05/1977, which was dismissed on the ground that Madina Khatoon is not wife of Mohammad Tazuddin. Ms. Shilpi Keshri, the learned counsel for the petitioner has submitted further that after withdrawal of Civil Miscellaneous Jurisdiction No. 615 of 2019, it was detected that the mother of the petitioner never filed a petition under section 125 of the Code of Criminal Procedure. As this new fact was detected after passing of the order of withdrawal, there was no option to the petitioner, but to file the present review petition.



The learned counsel for the respondents has submitted that though the petitioner and his mother Madina Khatoon, both filed petition for their impleadment and their petition was rejected by the learned court below, vide impugned order dated 07.03.2019, but Madina Khatoon never challenged that order as such it has become final. He has also submitted that so far as petitioner Hasan Ahamad is concerned, the petition in his respect was rejected on the ground that documents filed by Mohammad Hasan shows that his date of birth and his address mentioned in his I.D. proof are different, which created doubts.

The learned counsel for the respondents has submitted that the present review petition has been filed on the ground that there was no existence of Maintenance Case No. 05/1977 under section 125 of the Code of Criminal Procedure, but as per provisions of Order XLVII Rule 1 of the Code, the review petition may be filed in that court in whose order there was an apparent error on the record. The order was passed by the learned District Judge, Madhepura, as such, the review petition may be filed only before the District Judge, Madhepura and not before this Court, as this Court simply dismissed the petition as withdrawn at the request of the learned counsel for the petitioner. The learned counsel for the respondents has also



raised the point of limitation by submitting that as per Article 124 of the Limitation Act, there is limitation of only thirty days for filing the review petition, to which the learned counsel for the petitioner has submitted that due to spread of Covid-19, the Hon'ble Supreme Court has been pleased to extend the limitation period in all cases irrespective of their nature, till 28.02.2022, vide order dated 10th January 2022 passed in Miscellaneous Application No. 21 of 2022 in Suo Motu Writ Petition (C) No. 3 of 2020.

So far as the point of limitation is concerned, that has uniformly been condoned/extended till 28.02.2022 irrespective of nature of cases, by the Hon'ble Apex Court.

The main submission of the learned counsel for the petitioner is that the impugned order dated 07.03.2019 is erroneous on the ground that despite the fact that there was no existence of Maintenance Case No. 05/1977, the learned court below, having based its order on that maintenance case, has rejected the petition for impleadment of the petitioner and his mother.

As per provisions of Order XLVII Rule 1 of the Code, the review petition may be filed only before the court in whose order the apparent error occurred. The provisions of Order



XLVII Rule 1 of the Code is being quoted below:-

“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 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.**

(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.

Explanation.-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.”

The phrase “... may apply for a review of judgment of the Court which passed the decree or made the order” mentioned in Order XLVII Rule 1 (c), clarifies that review petition is maintainable only before the Court in whose order there was error. It is averment of the petitioner that recently it came to his notice that there is no existence of the Maintenance Case No. 05/1977, on the basis whereof the petition for impleadment of the petitioner and his mother was rejected.

Considering the above-mentioned facts and circumstances, this civil review petition is being disposed of with the observation that if the petitioner and/or his mother



files a review petition before the court below within a period of eight weeks from today, the learned court below shall be obliged to dispose of the review petition on merit.

(Nawneet Kumar Pandey, J)

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