

TEK CHAND AND OTHERS
VERSUS
DHOOP DASS AND OTHERS

Present: Mr. Kanwaljit Singh, Senior Advocate
with Mr. Robin Gill, Advocate
for the applicants-appellants.

Mr. Ashish Aggarwal, Senior Advocate
with Mr. Mukul Aggarwal, Advocate
for respondents.

**

1. One of the most difficult tasks while discharging the functions of a Judge is when he is called upon to review the judgment passed by a Presiding Judge who has demitted the office. The High Court as an institution, is required to ensure that justice is served at the end of each case and no party should suffer injustice on account of errors apparent on the face of the judgment or for any reason, whatsoever arising from any judgment of the High Court. With this spirit in mind, this Court proceeds to examine the case.

2. The appellants have sought a review of the detailed judgment passed by an esteemed brother Judge while dismissing RSA-1556-2018 on 26.11.2021.

3. Laying aside the unnecessary details, the brief facts, for the purpose of completing the narration of the case, are as under:-

4. Sh. Dhoop Dass *chela* (disciple) of Sh. Krishan Dass filed a suit for the possession of an agricultural land measuring 413 kanals and 18 marlas while alleging that father of defendant No.1 while taking the undue advantage of blindness of Sh. Chetan Dass, got sanctioned the mutation

No.1807 with respect to the sale of the suit land for Rs.5,000/- and such sale deed, being an unregistered document, does not transfer any right, title or interest in the suit property in his favour. He also sought declaration that various transactions *inter se* the defendants including the Civil Court decrees are not binding on his rights. Defendant No.1 (appellant herein) contested the suit alleging that late Sh. Chetan Dass sold the suit property on receipt of the sale consideration of Rs.5,000/- to his father late Sh. Ranpat Singh in the year 1950. It was asserted that the plaintiff filed an appeal, a revision as well as a review application before the appropriate authority against the sanction of the mutation, all of which were finally dismissed on 19.07.1965 by Sh. S.K. Mishra, the then Collector, Hisar. It was asserted that in the year 1950, Section 54 of the Transfer of Property Act, 1882 (hereinafter referred to as 'the 1882 Act') requiring the sale deed of an immovable property of value of Rs.100/- and more to be registered was not extended to the area of erstwhile Punjab, therefore, the aforesaid sale deed is valid. The trial Court dismissed the suit, whereas, the First Appellate Court reversed the judgment and decree.

5. On appreciation of pleadings, the trial Court culled out the following issues:-

“Issue No.1: Whether the plaintiff is entitled to the decree in possession in respect of the suit property, fully detailed and described in the head note of the plaint? OPP

Issue No.2: Whether plaintiff is entitled to relief of injunction as prayed for? OPD

Issue No.3: Whether suit of the plaintiff is not maintainable in the present form? OPD

Issue No.4: Whether plaintiff has no cause of action and locus standi to file the present suit? OPD

Issue No.5: Whether civil court has no jurisdiction to try

and entertain the present suit? OPD

Issue No.6: Whether suit of the plaintiff is time barred? OPD

Issue No.7: Whether the suit of the plaintiff is undervalued for the purpose of court fee? OPD

Issue No.8: Whether the plaintiff has not come to the Court with clean hands? OPD

Issue No.9: Relief.”

6. On 26.03.2018, while issuing notice of motion, the following order was passed:-

“Learned counsel for appellants inter alia submits that Dhoop Dass filed suit pertaining to property owned at one point of time by Chetan Dass. Plaintiff is not lineal descendant of Chetan Dass and has not claimed that he inherited estate of Chetan Dass after being appointed as Chella of Chetan Dass or Kishan Dass who was appointed as Chella in place of Chetan Dass. He further argues that the sale and mutation challenged by plaintiff-respondent no. 1 pertains to the year 1950. Ist Appellate Court has decreed the suit of appellants, without looking into above aspects.

Notice of motion.

Mr. Mukul Aggarwal, Advocate, assisting Mr. Ashish Aggarwal, Sr. Advocate, counsel for caveator accepts notice on behalf of respondent no.1.

Respondents no. 2 and 3 are proforma respondents, as such, their service is dispensed with, at this stage.

List on 03.08.2018.

Learned counsel for respondent submits that respondent will not file execution till next date.”

7. Ultimately, the appeal was dismissed on 26.11.2021. In fact, from the reading of the judgment, it is evident as under:-

“i. The Court after framing two questions proceeded to answer the same. The questions are as under:

- a. Whether the property belongs to the temple which was for the public purpose and administered and run by the Mahant?*
- b. Can such a property be alienated at the whims and fancies of the Mahant?”*

8. It is evident that in fact, none of the questions as culled out in

the judgment dated 26.11.2021 ever arose between the parties on the basis of the pleadings and the evidence led. It is not the case of the plaintiff that the property belongs to the temple. While filing the suit, the plaintiff has not asserted that the property belonged to a *Mandir* (temple) or a *Matth* (a religious organization). As per *Jamabandi* for the year 1939-40, late Sh. Chetan Dass was recorded as the owner of the property. In fact, an entirely new case, which did not arise from the pleadings of the parties, has been made out.

9. Moreover, in the judgment dated 26.11.2021, the Court has also noted some wrong facts. As per para 1 of the plaint, the plaintiff (respondent herein) claimed that late Sh. Krishan Dass was the disciple of Sh. Chetan Dass who was the owner in possession of the property. Sh. Krishan Dass died during the lifetime of Sh. Chetan Dass and the plaintiff (Sh. Dhoop Dass) is disciple of late Sh. Krishan Dass. It is claimed that after the death of Sh. Chetan Dass, the plaintiff has inherited the property. However, in the judgment dated 26.11.2021, the Court has observed that late Sh. Krishan Dass was the owner in possession of the suit land. The Court also erred in observing that the property in question is a *Math* (a religious organization) property, which is not the case of any of the parties to the litigation. It may be noted here that when the plaintiff appeared in evidence, he not only admitted the sale by Sh. Chetan Dass in favour of Sh. Ranpat on receipt of Rs.5,000/- but also admitted that the property belonged to Sh. Chetan Dass and it did not belong to any temple or religious trust. He further deposed that he is a married man with three children and has transferred 1069 kanals and 8 marlas of land in favour of his two sons namely Sh.Rajbir and Sh. Rambir.

10. Further, the First Appellate Court wrongly recorded that *Mahant* late Sh. Krishan Dass was blind at the time of execution of sale, whereas, it is not the case of the plaintiff that *Mahant* late Sh. Krishan Dass sold the property.

11. The review petition has been filed on various other grounds as well. It is evident that the judgment dated 26.11.2021 suffers from material errors which are apparent on the face of the record. It is evident that the judgment has been delivered on account of misconception and misapprehension of correct facts. Undoubtedly, merely an erroneous decision cannot be characterized as a error apparent on the face of the record, however, in view of the reasons recorded hereinbefore, it is evident that no other view is tenable, in the interest of doing complete justice.

12. Hence, though reluctantly but to make the ends of justice meet, this Court is left with no other choice but for to recall the judgment dated 26.11.2021.

13. It may be noted here that the learned counsel representing the non-applicant relies upon the judgment passed in **S. Madhusudan Reddy Vs. V. Narayana Reddy and others, 2022 (SCC) (Online) SC 1034**, to contend that the Court should not exercise its power of review even if two views are possible.

14. This Court has respectfully and carefully read the aforesaid judgment decided on 18.08.2022. The Supreme Court, after discussing the case law on the point in issue found that the review petitions in the peculiar facts of that case, were nothing short of an abuse of the process of the Court.

The Court held that an application for review of the judgment would only be

maintainable upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of record or for any other sufficient reason but on no other ground.

15. With utmost respect, the present case is not in conflict with the aforesaid judgment rather it falls within the ambit of review as discussed in it. However, in the facts of that case, the Court finally found that the errors on the face of the record of that case do not require the long drawn process of reasoning because two view points were conceivable. In the present case, the view taken in the judgment, if accepted, would result in defeating the ends of justice rather than upholding it as the view which is being set aside in this review application suffers from perversity and absurdity on the face of it.

Hence, the review application is allowed.

List the appeal for rehearing on 23.09.2022, in the urgent list after requisitioning the original record of the Courts below.

September 06, 2022

Ay

**(ANIL KSHETARPAL)
JUDGE**