IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.200 of 2023
In
CIVIL MISCELLANEOUS JURISDICTION No.57 of 2022

1. Gauri Shankar Singh S/o Late Vidya Singh R/o Village- Narsinghpur, P.S. Musahari, Dist. Muzaffarpur.
2. Uday Prasad Singh S/o Late Vidya Singh R/o Village-Narsinghpur, P.S. Musahari, Dist. Muzaffarpur.
3. Rama Prasad Singh S/o Late Vidya Singh R/o Village-Narsinghpur, P.S. Musahari, Dist. Muzaffarpur.
4. Shiv Chandra Singh S/o Late Jap Narain Singh R/o Village-Narsinghpur, P.S. Musahari, Dist. Muzaffarpur.
5. Most. Sita Sundari Devi R/o Village-Narsinghpur, P.S. Musahari, Dist. Muzaffarpur.
6. Rajiv Kumar @ Ashani S/o Late Dasrath Singh R/o Village-Narsinghpur, P.S. Musahari, Dist. Muzaffarpur.
7. Nagendra Singh @ Nagendra Prasad Singh S/o Late Sogarath Singh R/o Village-Narsinghpur, P.S. Musahari, Dist. Muzaffarpur.
8. Vimlesh Kumar, S/o Late Rajdeo Singh, R/o Village - Narsinghpur, P.S.- Musahari, Distt. - Muzaffarpur.
9. Binit Singh S/o Late Uma Shankar Singh R/o Village-Narsinghpur, P.S. Musahari, Dist. Muzaffarpur.

... ... Petitioner/s

Versus

1. Ram Kripal Singh S/o Late Ram Briksh Singh R/o Village-Narsinghpur, P.S. Musahhari, Dist. Muzaffarpur
2. Ram Ekbal Singh S/o Late Ram Briksh Singh, R/o Village- Narsinghpur, P.S. Musahhari, Dist. Muzaffarpur
3. The State of Bihar through the Principal Secretary Department of Revenue and Land Reforms Govt. of Bihar, Patna.
4. Sunita Kumari, D/o Late Uma Shankar Singh, R/o Village- Narsinghpur, P.S. Musahari, Dist. Muzaffarpur.
5. Surendra Kumar, S/o Late Raj Kishore Singh, R/o Village- Narsinghpur, P.S. Musahari, Dist. Muzaffarpur.
6. Deepak Kumar, S/o Late Raj Kishore Singh, R/o Village- Narsinghpur, P.S. Musahari, Dist. Muzaffarpur.
7. Ram Kailash Singh, S/o Late Bindeshwar Singh, R/o Village- Narsinghpur, P.S. Musahari, Dist. Muzaffarpur.
8. Nirmala Devi, W/o Ramesh Thakur, R/o Vilage - Harishankar Manaeri, P.O. Shilot, P.S. Manaeri, Dist. - Muzaffarpur.
9. Sita Devi, W/o Sunil Tiwary, D/o Late Ram Briksh Singh, R/o Village- Dwarika Nagar, P.O. Binda, P.S. Mushari, Dist. Muzaffarpur.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Suman Kumar, Advocate
For the Opposite Party/s : Mr. Binod Kumar Singh, Advocate
Ms. Vagisha Pragya Vacaknavi, Advocate
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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

Date : 26-04-2024

This review application has been directed against the judgment dated 26.06.2023 passed by this Court in Civil Miscellaneous No.57 of 2022 which was allowed and held that the Execution Case No.15 of 1967 (arising out of Preliminary decree dated 25.04.1996 in Partition Suit No.36 of 1962/78 of 1996) is automatically revived. It has been observed that proceedings including suit, appeal and revision abated after notification under Section 3 of the Consolidation Act and it remains operative till denotification under Section 26A (on close of the consolidation operation) or under Section 4A (cancellation of notification under Section 3 of the Act).

2. Heard learned counsel for the parties and perused the materials available on record.

3. Learned counsel for the petitioners submits that the impugned judgment is bad in law as no question arises of revival of the said execution case in view of the judgment of the Full Bench in **Seikh Haidar Zan vs. Md. Yusuf Ansari & anr.** reported in **2000 (2) PLJR 338** wherein in para 11, it has

been laid down that denotification under Section 4A of the Bihar Consolidation Act does not mean that consolidation proceeding has been closed and denotification had been taken place under Section 26A of the Bihar Consolidation Act. He further submits that cancellation of earlier notification issued under Section 3 of the Bihar Consolidation Act, abated suit or appeal or revision will not revive. Accordingly, the impugned judgment/order is liable to be reviewed on this ground.

4. On the other hand, learned counsel for contesting opposite party nos.1 and 2 submits that the present review application is misconceived and there is no error apparent on the face of record and reasoning assigned by this Court in the impugned judgment and there is no valid ground for review the impugned judgment under the provisions of Order 47 of CPC. Accordingly, this review application is liable to be dismissed. He further submits that under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided. He next submits that the law is well settled that even if the judgment sought to be reviewed is erroneous, the same cannot be ground to review the same in exercise of powers under Order 47 Rule 1 CPC. An erroneous order may be subjected to appeal before the higher

forum but cannot be a subject matter of review under Order 47 Rule 1 CPC.

5. Having heard the learned counsel for the parties, it is beneficial to quote para 11 of the judgment of Full Bench of this Court in **Seikh Haidar Zan vs. Md. Yusuf Ansari & anr.** reported in **2000 (2) PLJR 338**.

> *"**11**. The Special Bench in **Ramkrit Singh v. The State of Bihar** (supra) held in no uncertain terms, "the consolidation operation closes by issue of notification envisaged in Section 26A". A Division Bench of this Court in **Chandrashekhar Singh v. Ram Lakhan Singh** 1981 BBCJ 188 : 1979 PLJR 547 while considering the duration of abatement of suit and/or appeal u/s 4(c) of the Consolidation Act held that abatement operates from the date of notification u/s 3 till the close of the consolidation operations u/s 26A. If I may say so, this has been the consistent view of this Court. It is well settled that if a provision of the statute is clear and unambiguous, it is not open to the court to give its own interpretation. It may be that after register of lands and the consolidation scheme have been finally published and the certificate of transfer has been granted u/s 15, for all practical purposes the consolidation operation comes to an end. As a matter of fact, u/s 14 of the Act, the final consolidation scheme also comes into force with effect from the date notified in that behalf. However, coming into force of the consolidation scheme is one thing and close of the consolidation operation is another thing for the purpose of continuance of the effect and consequence of notification u/s 3. As seen above, vide Section 4, the consequence of notification ensues from the date it is published in the official gazette u/s 3 and continues till the close of consolidation operation. The consolidation*

operations come to close only when a notification in that behalf is issued u/s 26A. It may be pointed out that both Section 14, as it presently stands, and Section 26A were brought in the statute by the same amendment, namely, Bihar Act 27/75 in the year 1975. In view of the express provisions of the Act, there cannot be any doubt that although the consolidation scheme comes into force u/s 14 from the date notified in that behalf, the consequence of the notification u/s 3 continues until issuance of notification u/s 26A. Abatement of suit u/s 4(c) is a consequence of notification and if the consequence continues upto the issuance of notification u/s 26A, when the consolidation operation statutorily comes to an end, it cannot be said that the consequence comes to an end with the grant of certificate of transfer u/s 15 or coming into force of consolidation scheme u/s 14. Question No. 1 is answered accordingly."

6. It is relevant to mention here that Section 4A of Bihar Consolidation Act provides for cancellation of the notification in respect of whole or part of the area covered by notification. It lays down that where the notification is cancelled, the concerned area shall subject to the final orders relating to correction of land record, if any, passed on or before the date of such cancellation, cease to be under consolidation operations with effect from the date of cancellation.

7. Section 16 lays down that the consolidation scheme confirmed under Section 13 (submission of the scheme to the Director of Consolidation) shall be deemed to be finally published record of rights under the relevant provisions of the

Bihar Tenancy Act, Chotanagpur Tenancy Act or the Santhal Parganas Settlement Regulations, as the case may be, Section 26A provides for close of the consolidation operation.

8. The reference question no.1 formulated for consolidation in **Seikh Haidar Zan vs. Md. Yusuf Ansari** (supra) was as under:

> "(1) Whether the consolidation operation comes to an end with the final publication of record of right under Section 16 of the Consolidation Act?"

9. It was answered by the court that although the consolidation scheme comes into force under Section 14 from the date notified in that behalf, the consequences of the notification under Section 3 continues until issuance of notification under Section 26A.

10. From perusal of the impugned judgment, it is clear that this Court considered the relevant provisions of Bihar Consolidation Act and also considered the earlier decision of this Court in **Dharam Nath Ojha vs. Raghunath Ojha (2001) 2 PLJR 268** : **Bhageshari Devi vs. Sheo Kumar Mishra 2001 (2) PLJR 239**, **Most. Prabhawati Kumari vs. State of Bihar and Ors. 2019 (4) PLJR 430** and judgment of Hon'ble Supreme Court in case of **Paras Nath Rai vs. State of Bihar 2012 (12) SCC 642** which considered the case of **Seikh Haidar**

Zan vs. Md. Yusuf Ansari & Another 2000 (2) PLJR 338 and thereafter observed that the proceedings including suit, appeal and revision abated after notification under Section 3 of the Consolidation Act and it remains operative till denotification under Section 26A (on close of consolidation operation) or under Section 4A (cancellation of notification under Section 3) of the Act.

11. Order 47 Rule 1 of CPC provides for filing an application for review. Section 114 of CPC empowers a Court to review its order if the conditions precedent laid down therein are satisfied. The review application is maintainable upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record and is also maintainable on account of some mistake or for any other sufficient reason which would depend on facts and circumstances of the case. An application for review may be necessitated by way of invoking the doctrine *"actus curiae neminem gravabit."*

12. On scope of review, the Hon'ble Supreme Court in **Sanjay Kumar Agarwal vs. State Tax Officer and another (2024) 2 SCC 362** observed as under:

> ***16.*** *The gist of the aforestated decisions is that:*

> ***16.1.*** *A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.*
>
> ***16.2.*** *A judgment pronounced by the court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.*
>
> ***16.3.*** *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 record justifying the court to exercise its power of review.*
>
> ***16.4.*** *In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected".*
>
> ***16.5.*** *A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".*
>
> ***16.6.*** *Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.*
>
> ***16.7.*** *An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.*
>
> ***16.8.*** *Even the change in law or subsequent decision/judgment of a coordinate or larger Bench by itself cannot be regarded as a ground for review.*

13. In view of the aforesaid position, in my considered opinion the well considered judgment sought to be

reviewed does not fall within the scope and ambit of review. The learned counsel for the review petitioner has failed to make out any mistake or error apparent on the face of record in the impugned judgment and has failed to bring the case within the parameters laid down by the Hon'ble Supreme Court in various decisions for reviewing the impugned judgment. There is no merit in the review application and is liable to be dismissed.

14. In that view of the matter, the instant review petition is dismissed.

(Sunil Dutta Mishra, J)

Harish/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	29.04.2024
Transmission Date	