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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RA-RS-9-2021 in
RSA-17-1990
Date of decision: 01.08.2024

Santosh Kumari and others

...Appellants

Versus

Jind Improvement Trust and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ashok Aggarwal, Sr. Advocate with
Mr. Mukul Aggarwal, Advocate and
Mr. Amit Aggarwal, Advocate and
Mr. Shrenik Jain, Advocate
for applicants/LRs of respondent No.2.

Mr. R.K. Gupta, Advocate for the non-applicants/appellants.

VIKAS BAHL, J. (ORAL)

1. The present review application has been filed by the applicants/LRs of respondent No.2, who was defendant No.2 in the civil suit. Prayer has been made in the review application for reviewing the judgment dated 28.04.2020 passed in RSA No.17 of 1990.

2. Learned Senior Counsel for the applicants/LRs of respondent No.2 has primarily raised two arguments for seeking review of the judgment dated 28.04.2020. The first argument raised is to the effect that in the present case, it was not in dispute that during the pendency of the suit, possession was delivered to defendant No.2 on 20.09.1984 and the said fact



had been recorded in the order dated 17.10.1984 passed in an appeal arising out of order dated 07.09.1984 passed in an application filed under Order 39 Rules 1 and 2 of CPC by the plaintiffs. It is submitted that the objection regarding maintainability of the suit was also raised in the written statement and in spite of the fact that the plaintiffs were not in possession of the property, no prayer for possession was made and only a simplicitor suit for mandatory injunction in addition to other reliefs was filed. It is argued that no amendment in the plaint was sought or made even after the possession of the suit property had been delivered to defendant No.2, although the case was kept pending before the trial Court upto 22.12.1986. It is further submitted that although the learned Single Judge had considered the said argument but the observations made in para 16 of the judgment dated 28.04.2020 passed by the learned Single Judge were not in accordance with law and were erroneous.

3. The second argument raised on behalf of the applicants/LRs of respondent No.2 is that in the present case, a perusal of the record would show that Ex.D2 dated 15.04.1983 was the letter issued by defendant No.1 regarding allotment of the plot in question to defendant No.2 and in pursuance of the same, another letter had been issued by defendant No.1 to defendant No.2 dated 19.08.1983 asking defendant No.2 to deposit the installments and thereafter, agreement dated 05.09.1983 (Ex.D3) was also executed between defendant No.1 and defendant No.2 and all the said three documents have not been challenged and no suit for declaration qua the said three documents had been filed. It is submitted that in the said circumstances, the said suit is not maintainable and reliance in this regard



has been placed upon the judgment of the Hon'ble Supreme Court in the case of **Ratnagiri Nagar Parishad Vs. Gangaram Narayan Ambekar and others**, reported as **(2020) 7 Supreme Court Cases 275**. It is submitted that on the said two grounds, the judgment dated 28.04.2020 deserves to be reviewed and the matter deserves to be reheard on merits.

4. Learned counsel for the plaintiffs/non-applicants, on the other hand, has vehemently opposed the present review application and has submitted that in the garb of review, applicants/LRs of respondent No.2 are seeking to re-argue the matter which is not permissible. In support of his arguments, learned counsel has referred to the judgment of the Hon'ble Supreme Court in the case of **Parsion Devi and others Vs. Sumitri Devi and others** reported as **(1997) 8 Supreme Court Cases 715**, and in the case of **Tamil Nadu Terminated Full Time Temporary LIC Employees Association Vs. S.K. Roy, Chairman, Life Insurance Corporation of India and another**, reported as **(2016) 9 Supreme Court Cases 366**. It is further submitted that both the issues raised by the applicants have been dealt in detail in the judgment dated 28.04.2020 passed by the learned Single Judge and the applicants cannot be permitted to re-agitate the issue as if they were arguing the appeal against the said judgment. It is further submitted that all the material issues which were framed in the present case, which included the issue of entitlement of the present non-applicants/plaintiffs, were decided by the trial Court and the First Appellate Court in favour of the plaintiffs/non-applicants and the First Appellate Court had only on a technical point regarding maintainability, reversed the well reasoned judgment of the trial Court. It is also submitted that on the aspect of



maintainability, the judgment dated 28.04.2020 passed by the learned Single Judge is in accordance with law and does not call for any interference. It is further submitted that as far as the second issue with respect to declaration is concerned, the said ground was neither pleaded in the written statement nor was argued before the trial Court nor was the same relied upon by the First Appellate Court to allow the appeal of defendant No.2. It is argued that the said three documents which have been referred to by the applicants are not registered documents and were not in the knowledge of the applicants and once the factum of entitlement of the applicants to the extent of ½ share in the suit property was established, then the relief which had been granted by the trial Court which has been upheld by the learned Single Judge was totally in accordance with law.

5. This Court has heard learned Senior Counsel for the applicants/LRs of defendant No.2 and learned counsel for non-applicants/plaintiffs and has perused the record.

6. While adjudicating the present review application, it would be relevant to note the judgment of the Hon'ble Supreme Court passed in the case of ***Parsion Devi and others*** (Supra). In the said judgment, the Hon'ble Supreme Court had observed that while exercising the power of review under Order 47 Rule 1 CPC, it is not permissible for the Court to rehear and correct an erroneous decision and that the review petition must be resorted to for a limited purpose and cannot be allowed to be "an appeal in disguise". It was observed that an erroneous decision can be corrected by a higher forum but could not be the reason to exercise review jurisdiction. Relevant portion of the said judgment is reproduced hereinbelow:-



“9. Under *Order 47 Rule 1 CPC* a judgment may be open to review *inter alia* if there is a mistake or an error apparent on the face of the record. **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 the record justifying the court to exercise its power review under *Order 47 Rule 1 CPC*. In exercise of the jurisdiction under *Order 47 Rule 1 CPC* it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise."**

10. Considered in the light of this settled position we find that Sharma, J. clearly over-stepped the jurisdiction vested in the court under *Order 47 Rule 1 CPC*. The observation of Sharma, J. that "accordingly", the order in question is reviewed and it is held that the decree in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunction were provided" and as such the case was covered by Article the scope of *Order 47 Rule 1 CPC*. **There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which not of such a nature, "Which had to be detected by a long drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in**



exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment debtors could have approached the higher forum through appropriate proceedings, to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review of the order of petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and accordingly accept this appeal and set aside the impugned order dated 6.3.1997."

7. In the light of the law laid down in the abovesaid judgment of the Hon'ble Supreme Court, it would be relevant to note that in the present case both the arguments now sought to be raised for reviewing the judgment dated 28.04.2020 of the learned Single Judge, have already been considered in detail by the learned Single Judge. The argument with respect to possession has been dealt with in paras 16 and 17 of the said judgment and the argument with respect to non-maintainability of the suit for mandatory injunction without challenging the prior allotment has been dealt with in para 21 of the said judgment. The said paragraphs 16, 17 and 21 of the said judgment dated 28.04.2020 are reproduced hereinbelow:-

"16. As per settled law, maintainability of a suit is to be seen on the date of filing of the suit. A Court in the interest of justice can mould the relief by taking note of any subsequent development taking place during pendency of the suit. Admittedly, the plaintiffs/ appellants filed the suit for mandatory injunction for issuing mandate to defendant No.1 for allotment of half share of plot No.41 situated in Scheme No.19 in favour of plaintiff and proforma defendant No.3. Relief of permanent injunction as a consequential relief was



*also sought restraining defendant No.1 from delivering the possession of the entire plot and issuing sale certificate and executing sale deed in respect of plot in question in favour of defendant No.2 only. The plaintiff/ appellants along with the suit also filed an application for stay under Order 39 Rules 1 and 2 for ad interim injunction. **To be noted that, Trial Court while deciding stay application protected the rights of plaintiff/ appellants, with specific observations, that ultimately, if the plaintiffs are found entitled to half share in plot No.41 Scheme No.19, they can get their share from defendant No.2 and they are not going to suffer any irreparable loss in case ad interim injunction is refused.** A Court while deciding ad interim injunction application is simply to see the prima facie case, balance of convenience and irreparable loss caused to the plaintiffs. Since no evidence was adduced by either of the parties, it was difficult for the trial Court to record any definite findings. However, **the trial Court while deciding application for ad interim injunction protected rights of plaintiff/ appellants with the following observations:-***

“On the other hand, even if ultimately it is held that plaintiffs are entitled to ½ share in the plot No.41 of Scheme No.9, they can get their share from the defendant No.2 later on and they are not going to suffer any irreparable loss in case ad interim injunction is refused.”

17. Admitted case of both the parties is that the possession of the plot was delivered on 20.9.1984 to defendant No.2 after decision of the application for ad interim injunction vide order dated 7.9.1984 vide which the rights of the plaintiff/ appellants had been fully protected subject to the decision of the suit on merits. Since the possession was handed over to defendant No.2 during pendency of the suit and the rights of the plaintiff/ appellants over the suit land had been protected



by the trial Court while deciding the application for ad interim injunction, trial Court was legally justified in deciding issue No.6 regarding maintainability of the suit in favour of the plaintiff.

21. It has been argued by learned counsel for the respondent that perusal of plaint itself shows that plaintiff/appellants were well aware of the fact that the plot had already been allotted in favour of defendant No.2 as on 15.04.1983 and yet the civil suit which was filed much later i.e. on 18.01.1984 merely sought mandatory injunction without challenging the prior allotment by way of declaration. It is contended that suit was, therefore, not sustainable. I am unable to accept this contention. Merely because the plaintiffs were aware that respondent/ defendant No.2 had been issued the said letter dated 15.04.1983, would not render the suit as not maintainable, more so when possession was still with the Trust and prayer in the plaint is not only for mandatory injunction but also for permanent injunction restraining the Trust from delivering the possession of the suit land with a further restraint from issuing the sale certificate and for executing the sale deed pursuant thereto in respect of suit property. In the premise, trial Court rightly held that relief of possession of ½ share of suit land can also be granted to the plaintiffs even if such a formal relief had not been claimed by the plaintiffs either at the first instance when the suit was filed or subsequently by way of amendment.”

8. It is, thus, apparent that the applicants are seeking to re-argue the matter and are wanting to project that the abovesaid findings are erroneous in law. The same in the opinion of this Court, does not fall within the realm of review jurisdiction as in case the applicants were aggrieved of



the said findings, it was/is open to the applicants to challenge the same in the higher forum i.e. before the Hon'ble Supreme Court of India.

9. Additionally, it would be relevant to mention that in the present case, learned Single Judge had considered the facts of the case in detail and had noticed that Pritam Singh who was predecessor-in-interest of plaintiffs/appellants/non-applicants had purchased plot Nos.47 to 50 situated in Vinod Nagar, Jind vide registered sale deed dated 26.04.1967 and thereafter, the plots in question were acquired by defendant No.1-Trust and as per policy decision of the Trust, resolution No.140 dated 07.02.1973 was passed by defendant No.1 to allot plot No.31 in Scheme No.6 in lieu of Plot Nos.47 to 50 of Vinod Nagar acquired by the Trust and that plot No.31 was not available for allotment. The case of the plaintiffs to the effect that husband of defendant No.2 was an employee of the office of the Deputy Commissioner, Jind and that after the death of Pritam Singh, she had taken an undue advantage of the situation and had got plot No.41 allotted in her favour in the year 1983, was also taken note of. The fact that plaintiffs/appellants/non-applicants, on coming to know about the said allotment on reserve price only in the name of defendant No.2, had served a legal notice on the Trust for allotment of half share of the plot in favour of plaintiffs/appellants and on their not doing so, had filed the present suit for mandatory injunction directing the defendant/respondent No.1 for allotment of half share of plot No.41 in Scheme No.19 along with other reliefs, was also noted. It is after noticing the pleas of both the parties and also after considering their rights that the learned Single Judge had rejected the said two arguments by giving the reasons which have been reproduced



hereinabove.

10. It would be further relevant to note that in the present case, as many as 11 issues were framed by the trial Court and the trial Court had decided all the material issues in favour of the plaintiffs. It had been held under issue No.1 that both Pritam Singh (predecessor-in-interest of the plaintiffs/appellants) and Anguri Devi were the owners in equal share of plot Nos.47-50 which were acquired by defendant No.1 and that Pritam Singh was not a *benamidar* as was sought to be pleaded on behalf of defendant No.2. Under issue No.2, it was observed that defendant No.2 had not been able to show as to how plaintiff No.1 had forfeited her rights in the property left by Pritam Singh and under issue No.3, it was observed that the material on record established that the plaintiffs and proforma defendant No.3 were the only legal representatives of deceased Pritam Singh. Importantly under issue No.4, the trial Court had observed that the plaintiffs and proforma defendant No.3 were the legal heirs of Pritam Singh deceased and they were entitled to $\frac{1}{2}$ share in plot No.41 situated in Scheme No.19 which had been given only to Anguri Devi-defendant No.2. Thus, on the basis of the said findings, the suit of the plaintiffs was decreed and defendant No.1 was directed to allot half share of plot No.41 situated in Scheme No.19 in favour of the plaintiffs. The First Appellate Court had not set aside the findings on any of the issues other than issue No.6 which was with respect to maintainability of the suit in question. Thus, the finding that the plaintiffs along with proforma defendant No.3 were entitled to half share in plot No.41 was not set aside by the First Appellate Court. The First Appellate Court had decided issue No.6 regarding maintainability in favour



of the non-applicants by observing that although possession of the plot was delivered to Anguri Devi during the pendency of the suit but since the relief of possession was not sought by the plaintiffs/present non-applicants thus, the suit was not maintainable. The entire facts and circumstances and the law on the point have been considered by the learned Single Judge and the arguments of both the parties which were addressed have also been noticed and on the basis of the same, the judgment of the First Appellate Court had been set aside and judgment of the trial Court had been upheld. This Court is of the opinion that entertaining the present review application would tantamount to rehearing and re-adjudicating the matter, which is not permissible in the review jurisdiction.

11. Keeping in view the abovesaid facts and circumstances, this Court finds that there is no merit in the review application and accordingly, the same is dismissed.

12. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

01.08.2024
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**