

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.158 of 2024

In
SECOND APPEAL No.279 of 1999

=====

KARU CHOUDHARY SON OF Late Balo Pasi Resident of Jawaripur, P.S.-
Barari, District Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the collector, Bhagalpur.
2. The Principal, Chikitsa Mahavidyalaya, Bhagalpur.
3. Sri Kailash Yadav, son of Late Guru Charan Yadav, Resident of Jawaripur,
Opp. Bhagwati Gali Mill, P.S.- Barari, District- Bhagalpur.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Najmul Hoda, Advocate
For the State	:	Mr. Braj Bhushan Mishra, AC to AAG-9
For the Resp No. 3	:	Dr. Manoj Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

6 05-02-2026 Heard Mr. Waliur Rahman, learned counsel for the

petitioner, the State as also Dr. Manoj Kumar representing

respondent no. 3.

2. The present petition has been preferred for the
following relief(s):

*“for review of the Judgment dated
27.09.2013 passed in Second Appeal No. 279 of
1999, by Hon'ble Mr. Justice Mungeshwar Sahoo, as
the State of Bihar has obtained the judgment on
wrong facts that the land in question was acquired
by the State under Land Acquisition Act for
construction of Medical College in Bhagalpur,*



however, the petitioner/plaintiff subsequently came to know that the land in question was never acquired by the State. Therefore, the survey entry in Khatiyan in the name of “Chikitsa Mahavidyalaya” is entirely wrong.”

3. The details of the land is/are as follows:

“Khata No. 100, Khesara No. 276 and 241, Mauja – Hajipur Gorain (Jawaripur) in the district of Bhagalpur.”

4. The petitioner preferred **Title Suit No. 174 of 1993** which came to be disposed of on **26.07.1997** passed by the learned **1st Additional Munsiff, Bhagalpur**.

5. Against the said order, the opposite party moved in **Title Appeal No. 96 of 1997** which came to be dismissed on **23.02.1999** by the learned **6th Additional District Judge, Bhagalpur**.

6. Still aggrieved, the **Second Appeal No. 279 of 1999** was preferred. The parties appeared and vide an order dated **27.09.2013**, a Bench of this Court [HMJ Mugeshwar Sahoo (as his lordship then was)] in paragraph nos. 16 and 17 held as follows:

16. From perusal of the judgment of both the courts below, it appears that the courts below



have not considered the well settled principles of law laid down by the Hon'ble Supreme Court since long. The courts below have decreed the plaintiff's suit merely on the ground that the defendants failed to prove that the property has been acquired by the State of Bihar for the purpose of medical college without noticing the fact that the college is also the defendant. The courts below have also not noticed that this was not the issue between the parties particularly when as stated above in paragraph 6, the plaintiff himself admitted that the property is a cut piece of the lands acquired and moreover, the plaintiff himself is praying for declaration of title on the basis of adverse possession which pre-supposes that the title is with somebody else. The plaintiff never brought the suit making a case that the State of Bihar is not the owner rather any other particular person is owner of the property and he ever denied the title of the said owner as such he acquired title by adverse possession. In my opinion, both the courts below have approached the case in wrong angle and decided the question in favour of the plaintiff without considering the above settled



principles of law. Accordingly, the substantial questions of law formulated are answered in favour of the appellants and against the plaintiffs-respondents.

17. In the result, this Second Appeal is allowed. The impugned judgment and decree of both the courts below are hereby set aside and plaintiff's suit is dismissed. However, considering the facts that the plaintiff is admittedly a member of the schedule caste and he has been exempted from payment of court fee in suit, therefore, no cost is awarded."

7. Aggrieved, the petitioner moved before the **Hon'ble Apex Court in Special Leave to Appeal (Civil) No(s). 2265 of 2014 (Karu Chaudhary vs. The State of Bihar)**. It was dismissed on **07.02.2014** and the order read as follows:

"the Special Leave Petition is dismissed"

(Annexure-2 to the petition).

8. With the passing of the aforesaid order by the Hon'ble Apex Court, the case should have attained finality. However, suppressing the aforesaid facts, the petitioner sent a letter to the office of the Hon'ble Prime Minister, Government of India which was forwarded to the State Government for



appropriate action. The petitioner thereafter picked up the threads and got a report from the Circle Officer. However, pursuant to the passing of the orders of the Court, the encroachment was removed and now the land is part of the Jawaharlal Nehru Medical College and Hospital, Bhagalpur (henceforth for short 'the Hospital').

9. The petitioner, thereafter, preferred **CWJC No. 19987 of 2021 (Karu Chaudhary vs. the State & Ors.)** against the act of the respondents and construction of the boundary wall of 'the Hospital'. The writ petition was disposed of on 06.03.2024 allowing him to prefer Civil review.

10. This followed the present petition.

11. Learned counsel for the petitioner submits that the order passed by the Hon'ble Apex Court is not a reasoned one and as such, it will not apply as doctrine of merger.

12. In support of the said claim, he has taken this Court to the Judgement of **Hon'ble Apex Court** in the case of **Kunhayammed & Ors. v State of Kerala & Anr.** reported in **AIR 2000 (SC) 2587** with reference to paragraph – **43** which read as follows:

43. We may look at the issue from another angle. The Supreme Court cannot of and does not reverse or modify the decree or order appealed



against while deciding a petition for special leave to appeal. What is impugned before the Supreme Court can be reversed or modified only after granting leave to appeal and then assuming appellate jurisdiction over it. If the order impugned a) before the Supreme Court cannot be re-versed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage.

To sum up our conclusions are :-

(i) Where an appeal or revision is provided against an order passed by a Court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the sub-ordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. First stage is up to the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is



granted and special leave petition is converted into an appeal.

(iii) Doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability or merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order



under challenge. All that it means is that the Court was not Inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two Implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly. other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the Court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the Court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings be-tween the parties.

(vi) Once leave to appeal has been



granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule (1) of Order 47 of the C.P.C.”

13. Learned counsel for the petitioner submits that the aforesaid observation of the Hon’ble Supreme Court is applicable in the present case and in that background, the Civil Review is maintainable.

14. Learned State counsel appears in this case and the point raised by him is that the scope of Civil Review is limited. Either the order is perverse or there is error of record and the petitioner has not shown any perversity of the order and/or error of record. Further, the well reasoned order was stamped by the Hon’ble Supreme Court by dismissing Special Leave to Appeal, as recorded above. The submission is that no liberty was granted either to the petitioner to approach afresh by filing a Civil Review.



15. In that background, when it has been stamped by the Hon'ble Supreme Court, it would not be proper by the High Court to sit over the matter and review the order particularly when, no perversity and/or error of record has been pointed out in the order.

16. The further submission is that so far as the order of the Hon'ble Apex Court is concerned, it only states that when an order refusing Leave to Appeal is passed, it shows that this is not the law of the Supreme Court rather it has chosen not to annul or modify the said order.

17. In that background, there is no bar for the parties to agitate the matters pending between them. However, this in no way allows the parties to once again re-open the same issue which has been consigned by a well reasoned order.

18. This Court has gone through the facts of the case as also the materials on record and have heard the parties. Admittedly, a reasoned order was passed by a Bench of this Court on 27.09.2013 as recorded above. The petitioner has not challenged the same on the ground of any perversity or error of record. He challenged the said order before the Hon'ble Apex Court which too was dismissed. No liberty was given to file any review. Learned counsel for the petitioner has not pointed out any perversity in the order and/or error of record warranting filing of



the present Civil Review petition.

19. It has to be recorded that in the communication to the Hon'ble Prime Minister of India, the petitioner knowingly suppressed the legal battles that he fought but ultimately lost.

20. So far as the order passed by the Hon'ble Apex Court in the case of Kunhayammed (supra) is concerned, learned State counsel has rightly pointed out that the observation of the Hon'ble Apex Court is that when the petition is dismissed without any reasoned order, it shows that the said order is not the law of the Supreme Court and parties are not prevented from litigating any further case between them. However, this certainly do not allow the parties to re-open the same issue again and again once the order passed by the High Court was not interfered with by the Supreme Court.

21. This Civil Review is ill advised and nothing but an abuse of process of law and needs to be dismissed with cost. Though the earlier Bench of Patna High Court chose not to impose any cost taking into account that the petitioner belongs to a Scheduled Caste Community, this Court do not deem it fit and proper to let him escape, once again, for the such misuse.

22. However, learned counsel for the petitioner submits that he genuinely belongs to the lowest strata of the society and as such, lenient view may be taken in imposing the cost.



23. Considering the aforesaid submission, the Civil Review petition stands dismissed with a token cost of Rs. 100/- to be deposited with the Patna High Court Legal Services Committee within a week. Failure to make payment, steps be taken for the realisation of the amount in accordance with law.

24. All the Interlocutory Applications also stand disposed of.

(Rajiv Roy, J)

Adnan/-

U			
---	--	--	--

