
(2017) 05 AHC CK 0092
In the Allahabad High Court
Case No : 297 of 2015

Apurva Singh 65(Civil Revision)2010

APPELLANT

Vs

Kr. Anand Singh And others

RESPONDENT

Date of Decision : 17-05-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 47](#), [Order 47 Rule 1](#), [Order 23 Rule 3](#) - Questions to be determined by the Court executing decree

Citation : (2017) 05 AHC CK 0092

Hon'ble Judges : Anil Kumar

Bench : Single Bench

Advocate : Rajiv Singh Chauhan, Subhash Vidyarthi

Final Decision : Dismissed

Judgement

1. Heard Shri Rajiv Singh Chauhan, learned counsel for the review-petitioner, Shri Subhash Vidyarthi, learned counsel for the opposite party nos.1 to 5 and perused the record. 2. Facts, in brief, which are necessary for disposal of the dispute involved in the present case are that Smt. Divya Shahi and Dr. Tej Pratap Shahi have filed a suit for partition in respect to House No. C-215, situated at Mohalla Civil Lines, Barabanki registered as Regular Suit No.645 of 2006 in the Court of Civil Judge (Jr. Div.), Barabanki. 3. During the pendency of the said matter, an application under Order 23, Rule 3 CPC has been moved for compromise between the parties, accepted by the court below by order dated 21.04.2009 and decreed the said suit in terms of the compromise. 4. Thereafter, an Execution Case No.07 of 2009 has been filed in the Court of Civil Judge (Sr. Div.), Barabanki. In the said matter, Kunwar Umesh Singh and Kunwar Ravindra Pratap Singh, who are the defendants in the said suit, filed an objection under Section 47 CPC, allowed by order dated 06.04.2010 passed by the Executing Court. 5. Order dated 06.04.2010 passed by Civil Judge (Sr. Div.), Court No.20, Barabanki in Execution Case No.7 of 2009 has been challenged by filing Civil

Revision No.65 of 2010. 6. In the said revision, review-petitioner/Kr. Apoorva Singh has been impleaded as opposite party no.11 and in spite of the service upon him, neither he nor any counsel appeared on his behalf. 7. On 20.03.2015, Civil Revision No.65 of 2010 has been allowed, the order dated 06.04.2010 passed by Civil Judge (Sr. Div.), Court No.20, Barabanki in Execution Case No.7 of 2009 has been set aside. 8. Kr. Apoorva Singh/review petitioner has filed the present review petition for recall of the order dated 20.03.2015 passed in Civil Revision No.65 of 2010. 9. Shri Rajiv Singh Chauhan, learned counsel for review-petitioner has pressed the review-petition on the following grounds :- (a) while passing the order dated 20.03.2015 in Civil Revision No.65 of 2010, no opportunity of hearing has been given to Kr. Apoorva Singh/review-petitioner. (b) The judgment and decree dated 21.04.2009, passed in Regular Suit No.645 of 2006 on the basis of the compromise, is not correct and the same was obtained by fraud. (c) The order dated 06.04.2010 passed by Executing Court by which objection filed by Kunwar Umesh Singh and Kunwar Ravindra Pratap Singh has been allowed, is perfectly valid as the compromise decree was obtained by fraud. 10. Accordingly, it is submitted by Shri Rajiv Singh Chauhan, learned counsel for review-petitioner that the review-petition may be allowed. 11. Shri Subhash Vidyarthi, learned counsel for the revisionist in the civil revision submits that in the present cases notice was sent to the review-petitioner/opposite party no.11 and as per office report dated 09.08.2012, notice was served upon him but in spite of the said fact, neither opposite party no.11 nor his counsel has put in appearance in the Civil Revision No.65 of 2010. So the ground taken by the review-petitioner, that the order dated 20.03.2015 passed in Civil Revision No.65 of 2010 is an ex-parte order, is not correct. 12. He further submits that the review-petitioner cannot agitate the judgment and decree dated 21.04.2009 passed in Regular Suit No.645 of 2006 as the same was passed only on the basis of compromise decree. 13. Shri Subhash Vidyarthi, Advocate on behalf of the revisionist in the civil revision further submits that once the review-petitioner has not filed any objection against the judgment and decree dated 21.04.2009, then in that circumstances, he has got no right to agitate the same in the present proceedings either in the Civil Revision No.65 of 2010 filed by the revisionist against the order dated 06.04.2010 passed by Civil Judge (Sr. Div.), Court No.20, Barabanki thereby allowing the objection filed under Section 47 C.P.C by Kunwar Umesh Singh and Kunwar Ravindra Pratap Singh or in the review-petition. So the present review-petition is liable to be dismissed. 14. I have heard learned counsel for the parties and gone through the records. 15. In order to decide the controversy involved in the present case, it will be appropriate to go through the provisions of Section 47 C.P.C. 16. Order 47, Rule 1 of the Code of Civil Procedure reads as follows : 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 which 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. 17. The grounds enumerated therein are specific. The principles for interference in exercise of review jurisdiction are well settled. The Court passing the order is entitled to review the order, if any of the grounds specified in the aforesaid provision are satisfied. 18. In the case of *Thungabhadra Industries Ltd. v. State of A.P.* AIR 1964 SC 1372, Hon"ble Apex Court while dealing with the scope of review had opined : "11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error." 19. In the case of *Parsion Devi v. Sumitri Devi* (1997) 8 SCC 715, Hon"ble Apex Court after referring to *Thungabhadra Industries Ltd.* (supra), *Meera Bhanja v. Nirmala Kumari Chaudhary* (1995) 1 SCC 170 and *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* (1979) 4 SCC 389 held as under :- "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 of 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 a limited purpose and cannot be allowed to be "an appeal in disguise"." 20. The aforesaid authorities clearly spell out the nature, scope and ambit of power to be exercised. The error has to be self-evident and is not to be found out by a process of reasoning. 21. In the matter in issue, it is not in dispute that initially, the judgment and decree dated 21.04.2009 has been passed by the Court below

only on the basis of the compromise. Thereafter, Execution Case No.7 of 2009 has been filed in the Court of Civil Judge (Sr. Div.), Barabanki in which an objection under Section 47 C.P.C. was filed by Kunwar Umesh Singh and Kunwar Ravindra Pratap Singh, allowed by order dated 06.04.2010, challenged by the revisionist/opposite party nos.1 to 5. In the Civil Revision No.65 of 2010, notice was issued to the review petitioner and as per office report dated 09.08.2012, notice was served upon the review petitioner/opposite party no.11. When the Civil Revision No.65 of 2010 was taken up, neither review-petitioner/Apoorva Singh nor his counsel appeared. 22. Accordingly, after hearing learned counsel for the revisionist, order dated 20.03.2015 has been passed in the said revision by which order dated 06.04.2010 passed in Execution Case No.7 of 2009 has been set aside. 23. So far as the submission made by Shri Rajiv Singh Chauhan, learned counsel for the review-petitioner that at the time of passing of the order dated 20.03.2015 passed in Civil Revision No.65 of 2010, no opportunity of hearing was given to review-petitioner/Shri Apoorva Singh is concerned, admittedly, in the present case, against the order dated 21.04.2009 by which Regular Suit No.645 of 2006 was decreed in terms of the compromise and Execution Case No.7 of 2009 was filed in which objection under Section 47 C.P.C. was filed by Kunwar Umesh Singh and Kunwar Ravindra Pratap Singh and review-petitioner/Shri Apoorva Singh had not filed objection. Once, by order dated 06.04.2010, Executing Court has allowed the objection, which was challenged in the Civil Revision No.65 of 2010, allowed by order dated 20.03.2015, as the review-petitioner/Shri Apoorva Singh has not filed any objection against the order dated 21.04.2009 passed in Regular Suit No.645 of 2006, so he has got no right to agitate the same in Civil Revision. 24. In addition to the said fact, in the civil revision, notice was sent to the review-petitioner and in spite of the service served upon him, when the Civil Revision No.65 of 2010 was taken up, neither review-petitioner nor his counsel was appeared and after hearing the same on merit, order dated 20.03.2015 has been passed. So in these circumstances, it is incorrect facts on record submitted on behalf of review petitioner that the order dated 20.03.2015 passed in civil Revision No.65 of 2010 is ex parte order and while passing the same, no opportunity whatsoever was given to him, rather the same is contrary to the facts on record. 25. Next argument advanced by learned counsel for the review-petitioner that the judgment and decree dated 21.04.2009 which has been passed in Regular Suit No.645 of 2006 on the basis of the compromise is incorrect and obtained by fraud. The said argument cannot be seen at this stage in review-petition because in the civil revision, the point under consideration was that whether objection filed by Kunwar Umesh Singh and Kunwar Ravindra Pratap Singh under Section 47 C.P.C. has been rightly allowed by order dated 06.04.2010, said point has been adjudicated and decided by means of the order dated 20.03.2015 passed in civil Revision No.65 of 2010, hence the argument in question cannot be considered in the present review petition, however, the same may be agitated by the review-petitioner before appropriate court. 26. In View of the above discussion, and taking into consideration the law on the point of review that it lies only on the grounds

mentioned in Order 47, Rule 1 CPC. The party must satisfy the Court that the matter or evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. A party filing a review application on the ground of any other "sufficient reason" must satisfy that the said reason is analogous to the conditions mentioned in Order 47, Rule 1 CPC. 27. Under the garb of review, a party cannot be permitted to re-open the case and to gain a full-fledged inning possible for the Court to take a view contrary to what had been taken earlier. Review lies only when there is error apparent on the face of the record and that fallibility is by the oversight of the Court. The said position does not exist in the present case. 28. Accordingly, on the points on which the learned counsel for the review petitioner has pressed the review petition, the judgment dated 20.03.2015 passed in Civil Revision No. 65 of 2010 cannot be recalled. 29. For the foregoing reasons, review petition is dismissed with the observation made herein above. Petition Dismissed.