

(2011) 01 AHC CK 0218
In the Allahabad High Court

Case No : Application No. 248898 of 2009 in Civil Miscellaneous Writ Petition No. 11202 of 1986

Hardam Singh (since deceased) substituted by Devi Singh and Others APPELLANT

Vs

Deputy Director of Consolidation and Others RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226

Citation : (2011) 3 ADJ 81 : (2011) 112 RD 416

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Krishna Murari, J.—Heard Shri Rajiv Sharma, learned Counsel for the Petitioner-applicants.

2. This is an application filed by the applicants seeking review of the judgment dated 03.09.2009 dismissing the writ petition challenging the orders passed by consolidation authorities in chak allotment proceedings. Shri Rajiv Sharma was neither counsel for the Petitioners in the writ petition nor had argued the petition and this fact is admitted to him.

3. The question of propriety of filing a review petition and argument by a new counsel, who did not appear in the earlier proceedings, has been considered by the Hon'ble Apex Court in the case of Tamil Nadu Electricity Board and another Vs. N. Raju Reddiar and another, wherein it was observed as under:

The record of the appeal indicates that Shri Sudarsh Menon was the advocate on record when the appeal was heard and decided on merits. The review petition has been filed by Sri Prabir Choudhary who was neither an arguing counsel when the appeal was heard nor he was present at the time of argument. It is unknown

on what basis he has written the grounds in the review petition, as if, it is a rehearing of an appeal against our order. He did not confine to the scope of review it would not be in the interest or profession to permit such practice.

4. Same is the position in this case. Shri Rajiv Sharma who has filed the review application and has argued the same was neither the counsel for the Petitioner in the writ petition nor argued the petition nor was present at the time of hearing when the order under review was passed.

5. In view of law laid down by the Hon''ble Apex Court in the case of Tamil Nadu Electricity Board (supra), review application filed by a counsel who did not appear and argued the petition, cannot said to be just and proper so as to entitle him to argue the same.

6. Apart from above, the review application has been filed mainly on the grounds that the Petitioner is in possession over the land in dispute which is adjoining to the road and abadi land and containing his private tube-well, the only source of irrigation and the consolidation courts did not consider the same nor considered the materials placed on record and that there is a pakka road towards the north of plot No. 606 and while passing the order under review, all these facts have been ignored by the Hon''ble Judge.

7. It has also been contended by the learned Counsel for the applicants that the case law relied upon in the judgment under review relates to Company matters and, thus, they have no application to the facts of the case, which arose out of consolidation proceedings.

8. I have considered the grounds set forth in the review application as well as the argument advanced.

9. A perusal of the judgment under review goes to show that all the grounds raised in the review application were argued before the Hon''ble Judge who passed the order under review. It may be relevant to quote following from the judgment under review.

After losing the claim before all the consolidation authorities, the Petitioner has filed the instant writ petition and has contended that the impugned orders are illegal and unsustainable as the materials placed before the Petitioner were neither considered nor any finding has been recorded.

According to him, the Petitioner is in possession over the land and if the impugned orders are allowed to survive, the Petitioner would be deprived of the land which is adjoining to the road and abadi land. It has also been submitted that on plot No. 606, there is a tube well and it is only the source of irrigation from which he irrigates the land situate at plot No. 609. All these facts have not been considered by the consolidation authorities.

10. The paragraph quoted above from the judgment under review clearly goes to show that all the grounds on which this review is being sought, were argued and

have been considered and rejected by making following observation.

Having gone through the impugned orders, I am of the opinion that all the pleas raised by the Petitioner were considered by the consolidation authorities and were rejected. The consolidation authorities have passed the speaking orders and had considered all aspects of the matter. Counsel for the Petitioner has failed to point out any material irregularity or error apparent on the face of record to invoke extraordinary jurisdiction under Article 226 of the Constitution of India. The judgment of Settlement Officer (Consolidation) has been upheld by this Court in Writ Petition No. 5919 of 1979. It is not disputed that the Petitioner has sold the area measuring 2528 sq. mtr. from plot No. 609 which includes the entire decimal area of plot No. 609.

It is not justified for this Court to reappraise the same by merely stating the findings of fact recorded by the authorities below are not correct.

11. The aforesaid findings recorded in the judgment under review clearly goes to show that all the points on which review is being sought by the Petitioner-applicants were argued and considered while dismissing the writ petition.

12. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order XLVII Rule 1 Code of CPC according to which a judgment may be open to review, inter alia, if there is a mistake or an error apparent on the face of 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 record justifying the Court to exercise its power of review under Order XLVII Rule 1 Code of Code of Civil Procedure

13. Review application has a limited purpose and cannot be allowed to be heard as an appeal in disguise. The intent of the applicants is to press before the Court rehearing of the matter on the grounds which have already been considered in the judgment under review, and thus, the application is beyond the purview of the Order XLVII Rule 1 Code of Code of Civil Procedure

14. In so far as the argument advanced by the learned Counsel for the Petitioner-applicants in respect of the case law wrongly relied upon in the judgment under review, the same is also misconceived.

15. The case of O.T.M.O.M. Meyyappa Chettiar Vs. O.T.M.S.M. Kasi Viswanathan Chettiar and Another, has been relied upon for the proposition that writ Court is not justified in reappraising the findings of fact recorded by the authorities below merely by stating that they are not correct.

16. The second case law relied upon is of D.P. Maheshwari v. Delhi Administration and Ors. [(1993) 4 SCC 293], is for the proposition that nature of jurisdiction under Article 226 is supervisory and it is not open for the Court to exercise the jurisdiction of the trial court or the Tribunals.

17. The two case laws relied upon may not be arising out of consolidation

proceedings, but the principles laid down therein are applicable in exercise of writ jurisdiction irrespective of the factual aspect of the case.

18. In view of the aforesaid facts and discussions, the review petition filed by the Petitioner merits dismissal and, accordingly, stands dismissed.