

(2009) 12 GUJ CK 0032

In the Gujarat High Court

Case No : Misc. Civil Application - For Review No. 2547 of 2009 in Special Civil Application No. 3661 of 2009

Jagdishbhai Devrajbhai Patel

APPELLANT

Vs

Mukta Mohanji Solanki through Power of Attorney Holder and
Another

RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226, 227

Citation : (2009) 12 GUJ CK 0032

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Dalal, for the Appellant; Ashish H. Shah, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—Rule. Mr. Ashish H. Shah, learned advocate, waives service of notice of Rule on behalf of the Respondents. In the facts and circumstances of the case and with the consent of the learned Counsel for the respective parties, the application is being heard and decided, today.

2. This application has been filed for review of judgment dated 27.08.2009 (Coram: Smt. Abhilasha Kumari, J.) rendered in Special Civil Application No. 3661 of 2009.

3. Before coming to the review application, it would be helpful to give a brief background of the legal and factual position obtaining in the petition in the context of which the impugned judgment came to be passed. Special Civil Application No. 3661 of 2009 had been preferred by the present respondents (original plaintiffs) under Articles 226 and 227 of the Constitution of India. The challenge in the said petition was to order dated 07.03.2009 passed below application at Exhibit 42 in Regular Civil Suit No. 595 of 2005 by the learned 4th Additional Senior Civil Judge, Surat, whereby the said application filed by the

present applicant (original defendant) for amendment in the written statement, had been allowed. The relevant facts are that land bearing Survey No. 310, admeasuring 9510 sq. mts. situated at Mouje Adajan, Sub-District Choryasi, District-Surat as well as land comprised in Survey No. 311 admeasuring 3845 sq. mts. situated at Mouje Adajan, Sub-District Choryasi, District-Surat, were of the ownership of one Maganbhai Ghelabhai. The total area of the land of the aforesaid two Survey numbers measures 13355 sq. mts. The case of the petitioners therein, who are the original plaintiffs, and are now arrayed as respondents in the Review Application, is that the said land later on became part of the Town Planning Scheme Surat No. 13 (Adajan). On implementation of the Town Planning Scheme the aforesaid lands were given original plot No. 111 and were sought to be re-constituted into two Final Plots, being Final Plot No. 242 admeasuring 6755 sq. mts. and Final Plot No. 252 admeasuring 4876 sq. mts. According to the petitioners of that petition, original land owner, Maganbhai Ghelabhai executed a Deed of Power of Attorney in favour of one Naginbhai Surti. The original land owner as well as the Power of Attorney Holder wanted to organize a Society in the name of Radha Krishna Society. It was the case of the petitioners therein that out of the above two Survey Nos. 310 and 311, 124 plots were carved out and internal roads were laid down for the purpose of development of the above two Survey numbers. On coming into force of the Final Town Planning Scheme, Survey Nos. 310 and 311 were allotted original Plot No. 111 and were subsequently re-constituted as Final Plot Nos. 242 and 252 of the Town Planning Scheme Surat No. 13(Adajan). The original land owner Maganbhai Ghelabhai, through his Power of Attorney Holder Naginbhai Surti, executed a registered Sale Deed on 15.05.1986 in respect of Plot No. 111 of Survey No. 310 in favour of Nayankumar Hasmukhlal Nariyelwala for a consideration of Rs. 4,999/-. The purchaser, Nayankumar Hasmukhlal Nariyelwala, in turn executed a registered Sale Deed dated 09.05.1988 in favour of the petitioner No. 1 in that petition (present respondent No. 1) in respect of the Plot No. 111 of Survey No. 310 for consideration of Rs. 5,999/-. Similarly, by a registered Sale Deed dated 15.05.1986, the original land owner, through his Power of Attorney Holder, sold Plot No. 112 to one Hasmukhlal Sakarchand Nariyelwala for a consideration of Rs. 4,999/-, who, in turn, executed a registered Sale Deed in favour of the petitioner No. 1 on 09.05.1988, for a consideration of Rs. 5,999/-. The original land owner, through his Power of Attorney Holder also executed a registered Sale Deed dated 11.11.1987, in respect of Plot Nos. 113 and 114 of Survey No. 310, in favour of the petitioner No. 2 for a consideration of Rs. 7,999/- and another sale deed was executed by the original land owner, through his Power of Attorney Holder in favour of petitioner No. 2 on 11.11.1987, in respect of Plots Nos. 115 and 166 of Survey No. 310, for a consideration of Rs. 7,999/-. In sum and substance, the case of the petitioners in the said petition (present respondents) was that they have purchased Sub-Plots Nos. 111 to 116 out of Survey No. 310 by way of registered Sale Deeds through transactions, as described hereinabove. According to the petitioners, the present applicant (respondent in the petition) purchased land admeasuring 500 sq. mts. of Survey Nos. 310 and 311, bearing

Final Plot No. 252 vide registered Sale Deed dated 21.11.2003, and a revenue entry No. 9154 was mutated to this effect.

4. The original petitioners (respondents in this application) filed Civil Suit No. 595 of 2005 inter alia praying for declaration and permanent injunction against the original respondents (applicants in this application). In the said suit, the present applicant filed a written statement vide Ex.19, wherein he categorically admitted that the respondents herein are owners of Sub-Plots Nos. 111 to 116 of Survey No. 310 and he is the owner of 500 sq. mts. of Survey No. 311, Town Planning Scheme No. 13, which land is in his possession. The present applicant also stated in the written statement that he has no intention to make any encroachment upon the land of the respondents herein and he did not dispute the Sale Deeds vide which the land was purchased by the respondents herein or their ownership of the land in question. The respondents herein (original plaintiffs) filed an application below Ex.5 for grant of temporary injunction which has been allowed by the Trial Court, mainly on the ground that the ownership and possession of the land in question is with the respondents, which fact is not disputed as it is accepted by the applicant that the respondents herein are owners and in possession of Sub-Plots Nos. 111 to 116. The suit was instituted on 04.06.2005. The present applicant filed the written statement on 13.10.2005, wherein he admitted the ownership and possession of the respondents herein regarding Sub Plots No. 111 to 116 of Survey No. 310. However, by application dated 27.11.2007 at Ex.42 the applicant sought an amendment in the written statement which, in effect, sought to withdraw the admissions made by him therein. This application had been allowed by the Trial Court by order dated 07.03.2009 which was the subject-matter of challenge in the petition filed by the respondents herein. The said order has been quashed and set aside by the impugned order for reasons mentioned therein, and by placing reliance upon certain judgments of the Supreme Court, as mentioned in the impugned judgment, which is now sought to be reviewed.

5. Mr. D.R. Dalal, learned Counsel for the applicant, has made lengthy submissions, the gist of which is as under:

(a) The respondents have no right, title or interest in the suit property and nor is their possession of the same a legal one, therefore, the order dated 07.03.2009 of the Trial Court, permitting amendment of the written statement, ought not to have been set aside by this Court by passing the impugned order.

(b) The sale-deeds in favour of the respondents are not legal and valid which should have been taken into consideration by this Court while passing the impugned order. There is a patent, manifest and clear mistake on the face of the impugned order as the positive rule of law has been completely ignored and the basic facts, apparent on the face of the record, have not been considered, but have inadvertently escaped the attention of the Court, therefore, Review is pre-eminently justified.

(c) The impugned order has resulted in "derailment of justice" and this is a good ground for review as too narrow an interpretation of the provisions of Order 47, Rule 1 of the Code of Civil Procedure, 1908 ("the Code") would render the said provision nugatory.

(d) The respondents have categorically admitted the validity of the title of the applicant in the Plaint but the Court has not considered their admission, but only the admission made by the applicant. The issues have not been framed in either of the two suits therefore both the sides should be afforded equal opportunity to prove their cases on the strength of their own title deeds.

(e) Certain facts have escaped the attention of the Court which are that six registered sale-deeds of the respondents are of the year 1986 to 1988 from only one owner with respect to land admeasuring 382 sq. mtrs. Only, out of the then Survey numbers 310 and 311. There is no authorized plan of 124 or more plots and Radha Krishna Society is not a registered society whereas registered sale-deed of the applicant for 500 sq. mtrs. of land has resulted in mutation of Entry No. 9154 dated 27.12.2003 in the record of rights, and N.A. Permission and ULC clearance have been obtained in respect of the same. In fact, Radha Krishna Society does not exist, there are no plans and only receipts have been produced.

(f) Proceedings regarding the land in question are pending before the revenue authorities and the applicant is being penalized for a "loose admission" made by him in the pleadings before the Court below and this aspect has been entirely lost sight of by this Court while passing the impugned order. Further, it has not been taken into consideration that a mistaken admission can be explained away and is not conclusive.

(g) There is a clear-cut mistake of facts and law in the impugned order therefore the said judgment may be reviewed, and recalled, and the application allowed.

6. The learned Counsel for the applicant has placed reliance upon the following judgments:

(i) Shivdeo Singh and Ors. v. State of Punjab and Ors. AIR 1963 SC 1909

(ii) The Provincial Government of Madras (Now Andhra Pradesh) represented by the The Provincial Government of Madras Vs. J.S. Basappa,

7. However, while the judgment is being dictated, Mr. D.R. Dalal, learned Counsel for the applicant, has stated that he does not want to rely upon the said judgments. Therefore, this Court will not be discussing those judgments.

8. On the other hand, Mr. Ashish Shah, learned Counsel for the respondents has strongly opposed the application and has submitted that:

(i) The scope for review is a limited one and only if there is an error apparent on the face of an order, can it be reviewed. In the present case, the grounds for review contained in the application and as contended by the learned Counsel for the applicant are general ones and touch more upon the merits of the case. No

grounds for review have been made out.

(ii) No error apparent in the judgment sought to be reviewed has been pointed out and nor has it been specified at which place and in what manner the error, if any, has occurred.

(iii) All the grounds urged on which review has been sought are either not relevant or touch upon the merits of the matter and the applicant cannot be permitted to convert review proceedings into an appeal.

(iv) The impugned judgment has been passed on the merits of the matter and there is no error apparent on the face of the said judgment, and nor has any error been specified or pin-pointed by the learned Counsel for the applicant, therefore, the application may be dismissed.

9. The learned Counsel for the respondent has placed reliance upon a judgment of the Supreme Court in *Government of A.P. and Another Vs. A.V. Venugopala Rao*, in support of his submissions.

10. I have heard the learned Counsel for the respective parties, perused the averments made in the petition, contents of the impugned order and other documents on record.

11. The contention of the learned Counsel for the applicant that the respondents have no right, title or interest in the suit property and their possession of the same is not legal, is not a ground for review of the impugned judgment. In fact, this contention is beyond scope of the petition, which had been filed by the respondents herein, challenging an order whereby the application for amendment in the written statement had been allowed, having the effect of withdrawing the admissions made by the applicant. The right, title or interest of the parties was not the issue in the said petition. In any case, it is not a relevant ground for review.

12. The learned Counsel for the applicants has further contended that the order of the Trial Court permitting amendment in the written statement ought not to have been set aside by this Court by passing the impugned order. This, again, is not a ground for review but could be a ground for appeal, as it touches upon the merits of the petition.

13. The other grounds for review, urged by the learned Counsel for the applicant, are to the effect that positive rule of law has been ignored, basic facts have not been considered, justice has been derailed, the provisions of Order 47, Rule 1 of the Code should be given a wider interpretation, are not at all grounds for review. They either go to the merits of the case or are in the nature of general statements. None of the grounds urged elucidate or point out any error apparent on the face of the impugned judgment.

14. The learned Counsel for the applicant has made several submissions, some of which go beyond the scope of the petition. As the petition had been filed,

impugning the order of the Trial Court granting amendment, the validity or legality of the sale-deeds, was not at all a relevant issue and nor has it been gone into by this Court while passing the impugned order. Lengthy submissions have been made by the learned Counsel for the applicant but not a single reference has been made to the impugned judgment itself. It has not been pointed out where the error apparent on the face of the judgment has occurred, and which part of the judgment is erroneous or for what reason. Sweeping and general submissions have been made, with no actual reference to any portion of the impugned judgment. From the above, it is clear that the present review application is being converted into an appeal in disguise.

15. In this context, the observations of the Supreme Court in *Smt. Meera Bhanja v. Smt. Nirmala Kumari Choudhury* (supra) are pertinent and are reproduced hereinbelow.

8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, C.P.C. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of *Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh*, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (para 3):

It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.

16. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of

Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ."

9. In the light of this settled legal position let us try to see whether in the present case the latter Division Bench while dealing with the review petition had overstepped the limits of jurisdiction under Order 47, Rule 1 and whether it had resorted to re-appreciation of evidence by almost sitting in appeal over the decision reached by the earlier Division Bench.

17. Applying the above-mentioned principles of law to the facts of the present case, it is sufficiently clear that no error apparent on the face of the record has been pointed out by the learned Counsel for the applicant. In fact, if the grounds for review, as contended by the learned Counsel for the applicant and stated in the application, are perused, it becomes abundantly clear that the learned Counsel for the applicant has laid challenge to the merits of the matter which could only be done by way of an appeal.

18. As stated by the Supreme Court an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. The Review Court cannot re-appreciate the entire evidence or exercise jurisdiction of an appellate forum. In the present case, the submissions made, and grounds raised, by the learned Counsel for the applicant do not reveal an error apparent on the face of the record, in terms of the judgment of the Supreme Court quoted hereinabove. No grounds for review or recall of the impugned judgment are made out.

19. Before parting with this judgment, I am constrained to observe that the language used in the application is unrestrained, un-parliamentary, and, to put it mildly, definitely not befitting the language used in pleadings before a Court of law. However, ignoring this aspect, I have concentrated only on the substance of the application and, as the application is lacking in merit and substance, there exist no grounds for review of the impugned judgment, the application deserves to be dismissed. It is, accordingly, dismissed. Rule is discharged. There shall be no orders as to costs.