
(2008) 08 PAT CK 0116
In the Patna High Court
Case No : C.R. No. 1217 of 2008

Mahanth Tapes Goswami

APPELLANT

Vs

Bihar State Hindu Rel. Trust and Others

RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), Order 22 Rule 5

Citation : (2009) 3 PLJR 351

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Judgement

Mihir Kr. Jha, J.—Heard Mr. Keshav Srivastava, learned Senior Counsel appearing on behalf of the petitioner. The grievance of the petitioner in this civil revision application is confined to an order dated 25.6.2008 whereby and whereunder the court below had refused to review its earlier order dated 30.6.2006 impleading one Kailash Goswami as a party in Title Suit No. 6/1982.

2. Normally, it was very easy for this Court to dismiss this civil revision application by applying the parameters of an Order 47 of the CPC which permits review of a judicial order only in certain fixed contingencies and limited circumstances. In fact the scope of review of a judicial order is very limited and such power of review can be exercised only when a person satisfies the Court on the basis of discovery of a 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 or the order was passed. Review in fact is also permissible on the ground of some mistake or error apparent on the face of record or for any sufficient reason but on no other ground.

3. Here in this case, the petitioner had sought review of the order dated 30.6.2006 only on the ground that the consent given by his counsel for impleading Kailash Goswami as a party to the suit was on account of his (lawyer of the petitioner) being in collusion with Kailash Goswami. The court below however has analyzed this aspect of the matter at a great length and has found

that in the review application, there was in fact no averments that as a matter of fact lawyer of the petitioner had not given such consent for impleadment of Kailash Goswami and as such, the solitary ground on which review was sought by the petitioner was found to be beyond the scope of Order 47 of the C.P.C. In such a situation, when the findings of fact recorded in this regard by the court below has not been questioned by the petitioner in this civil revision application, it was quite easy for this Court to dismiss this civil revision application as against the impugned order refusing to review the order dated 30.6.2006.

4. Sri Srivastava, learned Senior Counsel appearing on behalf of the petitioner however, has submitted that the order dated 30.6.2006 was in the teeth of the direction of this Court dated 1.3.2005 passed in F.A. No. 700 of 1986 and as such, there was sufficient reason disclosed in the application seeking review for recall of the order dated 30.6.2006 and the impugned order passed by the court below is thus vitiated by jurisdictional error.

5. This Court would find that as a matter of fact, the aforementioned submission could have been made subject matter of the pending first appeal being F.A. No. 700 of 1986 inasmuch as this Court by an order dated 1.3.2005 had permitted the matter in terms of an Order XXII Rule 5 of the C.P.C, for holding an enquiry and recording findings "as to who is the heir/legal representative of the sole defendant/respondent Ramesh Goswami". If the petitioner was really aggrieved of the order dated 30.6.2006, the remedy before him was to move this Court by assailing the order dated 30.6.2006 either by filing of a civil revision application or by filing an interlocutory application in the aforesaid pending First Appeal. But, that having been not done, the petitioner cannot claim review of the said order by the court below as a matter of right. The province of review and the field of appeal travel in two different directions and one cannot be made synonymous of the other.

6. That apart, this Court having perused the materials on record and heard the counsel for the petitioner at length is of the opinion that no error has been committed by the court below in impleading Kailash Goswami as a party to the suit. It is not in doubt that in the Title Suit No. 6 of 1982 originally filed by one Tilak Das for being declared as Mahant, the core issue is as to whether the Hans Kabir Math is a public religious trust or a private religious trust. It is true that the said Title Suit No. 6 of 1982 filed by Tilak Das claiming himself to be Mahant of the aforementioned Math was dismissed holding Ramesh Goswami to be the Mahant but then that judgment and decree dated 22.9.1986 is subject matter of the pending F.A. No. 700 of 1986 before this Court wherein a question has arisen as to who should be substituted in place of sole defendant/respondent Ramesh Goswami who is said to have died on 13.5.1996 during the pendency of the appeal. The petitioner who was not a party to the suit had intervened in the proceedings at the stage of appeal by claiming that he had been appointed as Mahant on 23.5.1996 and he should be substituted in place of Ramesh Goswami. As usual, the dispute of Mahant in a religious trust has always attracted persons

who have an eagle's eye over the properties of the religious trust and therefore, when the plaintiff/appellant Tilak Das had sought to substitute one Nand Kishore Yadav in place of late Ramesh Goswami, this Court had found it necessary that an enquiry should be held in terms of Order XXII Rule 5 of the C.P.C, as to who is the heir/legal representative of late Ramesh Nandan Goswami. The order of this Court dated 1.3.2005 (part of Annexure-4) would go to show that the only issue remitted to the court below in terms of Order XXII Rule 5 of the C.P.C. is finding out as to who is the heir/legal representative of late Ramesh Nandan Goswami and therefore, the suggestion given by the learned counsel appearing on behalf of the petitioner that the dispute was confined to only him vis-a-vis Nand Kishore Yadav is to be noted for its being rejected,

7. Thus Court cannot shut its eye towards the subsequent events which have taken place after the matter was remitted by this Court to the court below for recording a finding on the issue of heir/legal representative of late Ramesh Nandan Goswami. It is on record of this proceeding and in fact not disputed as well by the petitioner that he was removed from the office of Mahant of the said Math by an order of Bihar Hindu Religious Trust Board dated 21.1.2006 and was replaced by Kailash Goswami. Kailash Goswami therefore, cannot be said to be a stranger nor the power of the Board with regard to the appointment of a Mahant can be questioned by the petitioner in view of the admitted fact that the said Hans Kabir Math has been registered and recorded as a public religious trust with the Board. Thus, if such trustee/Mahant appointed by the Board had sought his intervention in the suit at the stage of determination as to who was the heir legal representative of late Ramesh Goswami, no error can be said to have been committed by the court below in allowing such intervention as in terms of Order I Rule 10(2) of the C.P.C. Kailash Goswami would definitely be both a proper and necessary party to the suit on account of subsequent development arising from the aforesaid order dated 21.1.2006 passed by the Bihar State Hindu Religious Trust Board hereinafter referred to as the Board. As a matter of fact, the court below, while passing the order dated 30.6.2006, had definitely taken into account all these developments including the order of the Board dated 21.1.2006 appointing Kailash Goswami as a Mahant/Trustee of the Math and therefore, the solitary plea that the lawyer of the petitioner went into collusion with Kailash Goswami and had given consent for impleadment of Kailash Goswami without his (petitioner) knowledge or consent cannot be a ground for review or recall of the order.

8. It has to be also noted that it is not the case of the petitioner that the lawyer who had given consent for impleadment of Kailash Goswami was not engaged by him to represent him in the proceedings pending before the court below or that any action was taken by the petitioner before the Bihar State Bar Council against the said lawyer by the petitioner. In fact it is very easy for a losing litigant to ascribe motive against his counsel but then the court has to be absolutely wary while examining such plea of litigant. In the present case, it is a matter of record that the order dated 30.6.2006 was sought to be reviewed almost after two

years only on 30.4.2008 when the petitioner had filed a review application. By this time, the intervener Kailash Goswami had already adduced his evidence by examining his twelve witnesses and the same lawyer of the petitioner was conducting the proceedings on his behalf had also cross-examined all of them. It appears that when it became clear to the petitioner that his story of being heir/legal representative of late Ramesh Goswami had been exposed by Kailash Goswami, he came out with a wholly belated and in fact a frivolous plea that on 10.4.2008, he having found Kailash Goswami to be sitting in the chamber of his lawyer Sri Gajadhar Prasad Singh became aware of the collusion between the two and as such, the consent given by his lawyer leading to an order dated 30.6.2006 with regard to the impleadment of Kailash Goswami as a party to the suit was also a collusive order. The manner in which such review application was filed in fact itself would go to show that it was not only belated but was a scandalous and mala fide application and was rightly rejected by the court below. That being so, this Court would not find any error in the impugned order and consequently, this civil revision being wholly misconceived must be and is hereby dismissed.