
(1999) 01 OHC CK 0029
In the Orissa High Court
Case No : O.J.C. No. 5334 of 1997

Mohammed Hussain

APPELLANT

Vs

Ekram Khan and Others

RESPONDENT

Date of Decision : 08-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1999 Ori 151 : (1999) 87 CLT 565

Hon'ble Judges : S.N. Phukan, C.J.; P.K. Tripathy, J

Bench : Division Bench

Advocate : M.M. Basu and G.B. Jena, for the Appellant; G.K. Mishra, G.N. Mishra and A.M. Parida, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—In this application under Articles 226 and 227 of the Constitution of India, two substantial prayer of the petitioner are as follows ;

(1) "On submission of their show-cause be pleased to issue a writ in the form of certiorari to quash the judgment/decreed contained in Annexures 5 and 8;"

(ii) "be pleased to further direct the opposite party No. 9 to decide T. S. No. 47/92; afresh in accordance to law."

2. A detailed narration of the facts is not necessary but a short reference would suffice the purpose. Petitioner filed O. S. No. 92 of 1983-1 in the Court of munsif, Bhubaneswar (Presently), designated as Civil Judge (Junior Division). That suit was filed against opposite party No. 8 as the solitary defendant and describing him as a tenant of the suit house, Prayer was made for his eviction. Opposite party No. 8 conlesled the suit denying the title of the plaintiff over the suit house. Opp. party No. 8 asserted that late Bokhari Khan (father of opposite parties 1 to 7) was the real owner of the property and after his death his widow and sons and daughters having succeeded him, are the owner of the suit house and the properly. Neither petitioner prayed for addition of those persons as defendants

nor opposite party Nos. 1 to 7 were brought into record in that suit. The suit was decreed vide judgment dated 19-12-1986 (Annexure-1) with the direction to opposite party No. 8 to vacate possession of the suit house. Appeal preferred against that decree, by opposite party No. 8 was registered as T. A. No. 4/4 of 90/87 in the Court of the Second Additional District Judge, Bhubaneswar and it was dismissed on merit as per judgment dated 21-4-1992 (Annexure-2). Opposite parties 1 to 7 and their mother filed T. S. No. 47 of 1992 in the Court of Civil Judge (Junior Division), Bhubaneswar and the present petitioner and opposite party No. 8 figured respectively as defendant Nos. 1 and 2 in that suit. It was a suit for permanent injunction where the aforesaid plaintiffs asserted their title and possession and alleged about conspiracy between petitioner and opposite party No. 8. After possession of the rented, house as a tenant was taken away in 1992 from opposite party No. 8. Petitioner filed written statement claiming title over the suit land and the house on the basis of a registered sale deed of the year 1959 and claimed to have constructed the suit house. He also made a reference to the decree passed by the Munsif and the Second Additional District Judge vide Annexures 1 and 2 and alleged that opposite party No. 8 has set up the above plaintiffs to create disturbance in his title and possession. The opposite party No. 8 remained ex parte. In his judgment (Annexure-5) dated 13-9-1996, learned Civil Judge (Junior Division), Bhubaneswar recorded the findings that admittedly plaintiffs are in possession of the suit property. The plaintiffs being not a party to the previous suit instituted by the petitioner, they are not bound by the said judgments and the decrees. He further recorded that while admitting Bokhari Khan as the predecessor in title, petitioner failed to prove that he purchased the suit land in the year 1959. Thus, considering the admitted possession of the plaintiffs and failure of the defendant No. 1 to prove purchase of the land and the admitted entity of the title with the plaintiffs' family, he decreed the suit. Petitioner thereafter filed a review application under Order 47, Rules 1 and 3 of the CPC which was registered as Misc. case No. 319 of 1996. In that petition, inter alia, it was stated that (i) the decree is appealable, but no appeal had been preferred; (ii) The previous judgments of the Civil Court (Annexures 1 and 2) declaring title in favour of the petitioner is a judgment in rem and that finding is binding on the opp. party Nos. 1 to 7 and their mother; and (iii) without due consideration of Annexures 1 and 2 and proper evaluation of other evidence in record, the judgment passed by the Court (Civil Judge) is illegal and erroneous and it should be reviewed. Annexure-6 is that review application. Opposite party Nos. 1 to 7 filed their counter (Annexure-7). Keeping in view the aforesaid facts and circumstances and analysing the position of law relating to review, learned Civil Judge dismissed the review applications vide his order dated 27-2-1997 (Annexure-8) on the ground that review application does not merit consideration in the absence of any error apparent on the face of the record.

As stated at the outset, petitioner has thus prayed for issue of a writ of certiorari to quash Annexures 5 and 8.

3. After hearing argument from both the parties, this Court does not find any merit in the writ application and the prayer thereof. Reasons in that respect are indicated as hereunder.

4. It is the settled principle of law that power of superintendence by the High Court under Articles 226 and 227 of the Constitution with respect to the Courts and tribunals is with a view to ensure proper functioning of such Courts and Tribunals in accordance with the established provision of law and procedure and such power is to be invoked and exercised only in appropriate cases where non-interference will result in abuse of the process of Court and/or failure of ends of justice. It is the settled principle of law that while exercising jurisdiction under Articles 226 and 227 of the Constitution, High Court is not to act as an appellate Court so as to assess and evaluate the facts and to upset factual findings of the Courts below. It is also the settled principle of law that a mere error of law or erroneous approach to facts or law is neither sufficient nor proper for interference with the order of the lower Court or tribunal, unless the error is apparent on the face of the record and leads to miscarriage of justice. In the oftquoted case of Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, , the Apex Court after examining various authorities thus held that -

"(24). It is clear from an examination of the authorities of this Court as also of the Courts in England, that one of the grounds on which the jurisdiction of the High Court on certiorari may be invoked, is an error of law apparent on the face of the record and not every error either of law or fact, which can be corrected by a superior Court, in exercise of its statutory powers as a Court of appeal or revision."

Their Lordships further held that-

"(30) A Constitution Bench of this Court examined the scope of Article 227 of the Constitution in the case of Waryam Singh and Another Vs. Amarnath and Another, This Court, in the course of its judgment, made the following observations at p. 571 (of SCR): (at p. 217 of AIR):

"This power of superintendence conferred by Article 227 is, as pointed out by Harries, C. J. in Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, , to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors."

It is, thus, clear that the power of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the powers under Article 226 of the Constitution. Under Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority. Hence, interference by the High Court,

in these cases, either under Article 226 or 227 of the Constitution, was not justified."

Similar view was also expressed in the case of India Pipe Fitting Co. Vs. Fakruddin M.A. Baker and Another, .

In the case of Miss Maneck Gustedji Burjarji Vs. Sarafazali Nawabali Mirza, , it was observed that -

".....It is indeed difficult to see how the learned Judge could entertain a Special Civil Application against a decree passed by a subordinate Court when the procedural law allows an appeal against it and that appeal lies to the High Court itself. It must be realised that the jurisdiction under Article 227 of the Constitution is an extraordinary jurisdiction which is to be exercised sparingly and in appropriate cases and it is not to be exercised as if it were an appellate jurisdiction or as if it gave unfettered and unrestricted power to the High Court to do whatever it liked....."

In the case of AIR 1975 1297 (SC) it was held that (at pp. 1301-02)-

"If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as a Court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate Court or tribunal final on facts."

In the case of Sukhbir Narain (Dead) by Lrs Vs. Deputy Director of Consolidation, , it was observed that -

".....The High Court could not have interfered with this order under Article 227 of the Constitution of India unless there was any error apprehension the face of the order. It has not been shown that the impugned orders manifest any such error which would warrant the exercise of the powers of the High Court under Article 227 of the Constitution of India. We do not propose to go into details as having taken into account all the relevant circumstances we are of the opinion that High Court was justified in dismissing the Writ Petitions in limine. If the appellants have any right in respect of these lands, it is open to them to pursue such remedy as may be open to them in accordance With law."

5. The scope of this Court in a writ jurisdiction to interfere with any order passed by Civil Court was discussed by a Bench of this Court in the judgment dated 21-11-1997 in OJC No. 6771 of 1997 : (reported 1998 AIHC 1814) Gobinda Chandra Tripathy v. Rama Chandra Tripathy. The Bench referred to the decision of the apex Court in Mahadeo Savlaram Shelke and Others Vs. Puna Municipal Corporation and Another, wherein the apex Court held that interference with the

order of the Civil Court is not warranted under Article 226 of the Constitution, but High Court can exercise this power under Article 227 of the Constitution.

6. The scope of Article 227 as laid down by the various decisions of the apex Court has been summarised in Shorter Constitution of India, Eleventh Edition, by Durga Das Basu, which is quoted as follows :--

"(i) Erroneous assumption of excess of jurisdiction.

(ii) Refusal to exercise jurisdiction.

(iii) Error of law apparent on the face of the record as distinguished from a mere mistake of law or error of law relating to jurisdiction.

(iv) Violation of the principles of natural justice.

(v) Arbitrary or capricious exercise of authority, or discretion.

(vi) Arriving at a finding which is perverse or based on no material.

(vii) A patent or flagrant error in procedure, (viii) Order resulting in manifest injuries."

7. The above well settled propositions of law, if applied to the facts and circumstances involved in the present case, then as argued by learned counsel for the petitioner, grievance of the petitioner is that the judgment and decree vide Annexures 1 and 2 were not given due importance while deciding the suit instituted by the opposite parties 1 to 7. The finding in Annexure-5 goes to show that learned Civil Judge referred to the aforesaid two judgments and found the same to be not binding on opposite parties 1 to 7 on the ground that it was a judgment in personam. In that context, this Court does not express any opinion because petitioner may seek legal remedy in appropriate forum. Apart from that aforesaid finding of the learned Civil Judge cannot be regarded as an error apparent on the face of the record. Another aspect of the case is that learned Civil Judge was not incorrect in rejecting the review application. He could not have set aside his own judgment to re-appreciate the evidence and re-think about the findings recorded by him. In the given circumstances and the grounds set forth in the application for review, it was not permissible under law to review the judgment. Under such circumstances, this Court does not find any reason to interfere with the order (Annexure-8) passed by the learned Civil Judge. So far as Annexure-5 is concerned, that being an appealable judgment, this Court refuses to exercise writ jurisdiction when the said judgment and decree are appealable.

8. Thus, the writ application is found to be devoid of merit and accordingly rejected. However, under the given circumstances, parties are directed to bear their respective costs of litigation in this forum.

S.N. Phukan, C.J.

9. I agree.