

(2014) 11 KAR CK 0016
In the Karnataka High Court
Case No : R.P. No. 525/2014

R. Srinivas

APPELLANT

Vs

The Commissioner, Bangalore Development Authority

RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Citation : (2014) 11 KAR CK 0016

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Abhilash for Sreevatsa, Assts, Advocate for the Appellant

Judgement

Aravind Kumar, J.—This is a plaintiffs review petition seeking for review of judgment passed by this Court in RFA No. 204/2009 dated 10.06.2014, whereunder this Court by affirming the judgment and decree passed by trial Court in O.S. No. 7882/2000 dated 31.01.2009, had dismissed the appeal filed by plaintiffs.

2. It is the contention of Sri. Abhilash, learned counsel appearing for review petitioner that evidence of D.W.1 has not been looked into by this Court, which is found at paragraph 19 at page 16 of the judgment of trial Court, which indicated that defendant - D.W.1 had admitted in his cross-examination about 14 guntas and 30 guntas of land in Sy.Nos.55/2B and 69/1 had been excluded from acquisition and as such, plaintiffs had continued to be in possession of suit schedule properties. On account of non-consideration of said material evidence available on record, there is an error apparent on the face of record, which has crept in the judgment dated 10.06.2014 passed in RFA No. 204/2009 and as such, he seeks for review of the order passed by this Court.

3. Having heard Sri. Abhilash, learned counsel appearing for review petitioner in-extenso and on perusal of records, I am of the considered view that petitioner has not made out a case for review of the judgment passed in RFA No. 204/2009 for following reasons.

4. Scope of review is limited under the guise of change of counsel or a fresh argument cannot be allowed to be advanced and law laid down on this aspect by the Hon'ble Apex Court in the case of Kamlesh Verma Vs. Mayawati and Others, is squarely applicable to facts on hand. It has been held by the Hon'ble Apex Court in said judgment that review would be maintainable where new and important matter or evidence which, after the exercise of due diligence and which was not within knowledge of petitioner could not be produced or there is a mistake or error apparent on the face of record or for any other sufficient reason. It has been held by the Hon'ble Apex Court in the above referred judgment as under:

"20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in *Chhajju Ram v. Neki* and approved by this Court in *Moran Mar Bassekios Catholicos v. Most Rev. Mar Poulouse Athanasius* to mean a "reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd.*

20.2 When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of

arguing the main matter had been negated."

5. It has also been held by the Hon''ble Apex Court that minor mistakes of inconsequential import cannot be a ground for review amongst other contours laid down.

6. In fact the Hon''ble Supreme Court in the case of Tamil Nadu Electricity Board and another Vs. N. Raju Reddiar and another, has held that review petition itself cannot be filed that too by an advocate who was not the Advocate on record and who neither appeared nor was a party in the main case. Deprecating such practice, it has been held by the Hon''ble Apex Court to the following effect:

"When an appeal/special leave petition is dismissed, except, in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the advocate on record who neither appeared nor was party in the main case, it is salutary to note that Court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession."

7. Keeping these contours in mind when the facts on hand are examined, it would indicate that plaintiffs/appellants/review petitioners had raised similar contention before this Court while arguing the appeal, which was no doubt by a different counsel, namely contending inter alia that an extent of 14 guntas of land in Sy. No. 55/2B and 30 guntas of land in Sy. No. 69/1 had been given up from acquisition, since construction had already come up even as on the date they were notified for acquisition and this fact had also been admitted by D.W.1 in his cross examination and said admission was sufficient enough for the trial Court to have decreed the suit for perpetual injunction, inasmuch as, it had been held by virtue of said admission it indicated that plaintiffs were in settled possession of suit schedule property and non-consideration of this vital evidence available on record, had resulted in great prejudice to plaintiffs' claim. This Court had examined the plea raised in that regard and after considering the same at paragraph 16 had negated said contention for reasons assigned therein. At the cost of repetition, it requires to be extracted and same reads as follows:

"16. As already noticed herein above, in a suit for perpetual injunction, question of title cannot be gone into. It is the possession and possession alone which will have to be examined and it would be based on the plaint averments, evidence tendered in this regard in support of the same and no other material. The admissions if any of the defendant would not come to the rescue of the plaintiff in a suit for injunction as sought to be contended by the learned counsel for appellant in the present appeal. Plaintiffs have to stand on their own legs and the admissions of defendant or weaknesses in the defence would not come to the

rescue of plaintiffs to seek for grant of equitable relief. Even otherwise, said plea when examined with reference to facts on hand, would clearly indicate that plaintiffs have claimed that D.W.1 had admitted in his cross examination that about 14 guntas and 30 guntas of land in Sy. No. 55/2B and 69/1 has been excluded from the acquisition. If it were to be so, burden was cast on the plaintiffs to establish that suit schedule property is situated within this excluded portion. It is not the case of plaintiffs that suit schedule property is in the excluded portion inasmuch as, there is no plea in the plaint in this regard. On the contrary it is the case of plaintiffs that suit schedule property is located in the portion of land acquired by BDA. This is corroborated from the fact that plaintiffs themselves have admitted to be so. Representation submitted by plaintiffs on 29.3.2000 to BDA as per Ex. P-47 would itself defeat the claim of plaintiffs inasmuch as, in the said representation, they admit that suit schedule property is within the area which is the subject matter of acquisition and as such, they have sought for levy of reasonable penalty and allotment of suit schedule site in their favour. Hence, contention raised by Sri Manjunath Hegde, learned Advocate appearing for appellant in this regard cannot be accepted."

8. When plaintiffs are seeking for equitable relief of injunction, burden was cast on them to prove their possession and having raised a plea that certain extent of lands were excluded from the purview of acquisition, it was incumbent upon them to establish that suit schedule properties would fall within the said unacquired area. On account of there being no positive evidence available in this regard, this Court had examined the plea raised in that regard and brushed aside the same for reasons set out in the judgment passed by this Court on 10.06.2014.

9. Hence, I find there is no error apparent on the face of record in the judgment released in RFA No. 204/2009 on 10.06.2014 and even for any other substantial cause, it cannot be held that the judgment passed by this Court requires to be reviewed.

Hence, I do not find any merit in this review petition and same stands dismissed.