
(2016) 11 AHC CK 0110
In the Allahabad High Court
Case No : Review Petition No. 234 of 2015

Ram Asrey

APPELLANT

Vs

Smt. Anara

RESPONDENT

Date of Decision : 25-11-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2017) 1 ARC 63

Hon'ble Judges : Aditya Nath Mittal, J.

Bench : Single Bench

Advocate : Onkar Nath Tiwari and Ashutosh Singh, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Aditya Nath Mittal, J.— Heard learned counsel for review petitioner, learned counsel appearing for the opposite parties and perused the record.

2. This review petition has been preferred against the judgment and order dated 04.05.2015 passed by this court in Second Appeal no.925 of 1979, whereby the appeal was allowed. The operative portion of the order, on reproduction, reads as :

"From the aforesaid discussion, it is clear that the plaintiff and the defendant stood in a fiduciary relationship and the said gift deed was got executed by exercising undue influence and fraudulent misrepresentation. Learned trial court has considered each and every aspect of the said transaction. His findings are more close to the pleadings and evidence on record while the findings of learned first appellate court are far away from the pleadings and evidence on record. Although, it has not been argued but it is also relevant to mention that the learned first appellate court has not formulated the points for determination in view of the provisions of Order 41, Rule 31 of the C.P.C.

In view of above, the judgment and order dated 4.9.1979 passed by the first appellate court is liable to be set aside and the second appeal is liable to be

allowed.

The second appeal is allowed.

The judgment and decree dated 4.9.1979 passed by the District Judge, Faizabad in Civil Appeal No. 217 of 1978 is set aside and the findings recorded by learned Munsiff, Akbarpur, Faizabad, in Regular Suit No. 331 of 1975 by judgment and decree dated 3.4.1978 are upheld.

The gift deed in question dated 29.10.1969 which was registered on 12.4.1971 stands cancelled. The concerned Sub-Registrar is directed to make necessary endorsement in its records.

Office is directed to send the certified copy of this order along with lower court record to the court concerned at an early date."

3. Learned counsel for the review petitioner has stated that there is apparent error by shifting onus of burden to the lessee and the presumption under Registration Act has not been considered. It has also been submitted that the issue of limitation for instituting the suit has also not been considered properly and an erroneous finding on the part of the misrepresentation, fraud and undue influence has been made.

4. Learned counsel appearing for the opposite party no.2 has submitted that there is no apparent error on the face of record, therefore, the review petition is not maintainable. It has also been submitted that the review petition cannot be filed by a counsel who had not argued the matter. Therefore, the review petition is not maintainable on this ground also. In this regard, he has relied upon the case of Kaniz Fatima v. ADJ Meerut; 2008 (70) ALR 361 in which in para 19, it has been held as under:

"Even in the order dated 20.3.2007 the Court has observed that In spite of undertaking given by the petitioner for vacating the shop in dispute, they are not complying with the judgment and order and has also imposed cost upon them amounting to Rs. 20,000. It is pertinent to mention here that the review application was filed by the petitioners beyond the time by a subsequent counsel, which was not maintainable at his instance as it was not filed by Sri I.K. Chaturvedi the counsel who had filed and argued the case."

Learned counsel for the opposite party no.2 has further relied upon the case of Shri Prakash Mishra v. State of U.P. and others; 2010 (79) ALR 51 in which in paragraph 3, it has been held as under:

"Though, normally, in recall/review application moved by another counsel, it is not appropriate to hear a different counsel but in the interest of justice, I give full opportunity to Sri Ashutosh Tripathi to address the Court and to show any error in my judgment dated 14.09.2009."

5. Learned counsel has further relied upon Tamil Nadu Electricity Board and another v. Raju Reddiar and another; AIR 1997 SCC 1005 wherein it has been

held that no review can be filed; that too by the advocate on record who neither appeared nor was party in the main case.

6. At the very outset, I may refer to the statutory grounds as provided under Order 47, Rule 1 of the Code of Civil Procedure, 1908, for seeking review of a judgment or order passed by this court. They are : (a) that there is discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) that some important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) that there was some mistake or error apparent on the face of record or there is any other sufficient reason.

It is also settled that 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.

7. In the judgment of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tiruymale passed by Hon"ble the Apex Court which is reported in (1960) 1 SCR 890, it has been held as under:

"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."

8. Further, that ratio has been reiterated in the judgment of Hon"ble the Apex Court in Parsion Devi v. Sumiri Devi reported in (1997) 8 SCC 715. The observations made by Hon"ble the Apex Court in the judgment are as:

"Under Order 47, Rule 1 , CPC a judgment may be open to review inter alia, if there is a mistake or an error apparent on the face of the 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 the record justifying the Court to exercise its power of review under Order 47, Rule 1 , CPC. In exercise of the jurisdiction under Order 47, Rule 1 , CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise."

9. The aforesaid views were reiterated by Hon"ble the Apex Court also in a later judgment reported in AIR 2006 SC 1634 (Haridas Das v. Smt. Usha Rani Banik and others). Similar views have also been taken in another judgment reported in JT 2009 (9) SC 537 : (2009) 14 SCC 663 (Inderchand Jain (D) through L.Rs. v. Motilal (D) through L.Rs.).

10. Hon"ble Supreme Court in the cases reported in (1995) 1 S.C.C. 170, Meera Bhanja (Smt.) v. Nirmala Kumari Choudhary (Smt.) and (1997) 8 S.C.C. 715,

Parsion Devi and others v. Sumitri Devi and others has held that the scope of review under Order 47, Rule 1 C.P.C. is very limited and this jurisdiction can be invoked only, if there is mistake or error apparent on the face of record. In the instant case, there is no error apparent on the face of record of the judgment.

11. As far as the onus of burden to the lessee is concerned, this aspect has been considered in detail and the onus has been shifted in accordance with the law laid down by Hon''ble the Apex Court.

12. As far as the presumption under the Registration Act is concerned, that presumption is rebuttalble and I do not find any manifest error apparent on the face of record in this regard.

13. Similarly, the issue of limitation has also been dealt with in detail.

14. One more point has also been argued by the learned counsel for the review petitioner although it has not been taken in the grounds of review that at page 11 of para 2 of the judgement, it has been stated that "it is well settled law that the Civil Court is not bound by the findings of the consolidation authorities because they are summary in nature", which is not correct. It appears that this sentence has been inadvertently framed in negative. The word "not" has been wrongly mentioned.

15. Learned counsel for the opposite party no.2 concedes that the finding of consolidation authorities are binding upon the Civil Court, as such, this error is liable to be corrected. Therefore, the sentence at page 11 of para 2 of the judgement, "it is well settled law that the Civil Court is not bound by the findings of the consolidation authorities because they are summary in nature" stands deleted.

16. Apart from above, there is no other manifest error on the face of record. Therefore, by keeping in view the law laid down by Hon''ble the Apex Court in the aforesaid judgments as well as admittedly the present counsel had not argued the main appeal, the present review petition is liable to be dismissed.

17. The review petition is dismissed with the modification as noted above.