

(1999) 03 OHC CK 0007

In the Orissa High Court

Case No : Civil Review No's. 61 and 62 of 1991

Sambhunath Bhagal and Others

APPELLANT

Vs

Bhagirathi @ Gopinath Ram

RESPONDENT

Date of Decision : 31-03-1999

Acts Referred:

Limitation Act, 1963 — Section 14, 5

Citation : (1999) 88 CLT 257

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Sujata Dash and Mr. S.N. Sinha, for the Appellant; B.N. Tripathy, S.K. Ghosh, C.R. Nanda and Y. Mohanty, for the Opp. Parties, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—Both the Review applications are directed against the common judgment passed by the High Court in Civil Revision Nos. 381 & 382 of 1985, disposed of on 6.04.1987. Both the Review applications are barred by limitation and separate petitions for condonation of delay are also being disposed of along with the Review applications by this common judgment.

2. The travails of the parties began about forty five years back. The original opposite party as plaintiff had filed Title Suit No. 50 of 1954 against the present petitioners for partition of the disputed property consisting of plot No. 561 (area. Ac.0.060 decimals) and plot No. 714 (area. Ac.0.004 decimals) in Cantonment area of Cuttack Town. It is not disputed that there was a house on plot No. 561. A preliminary decree for partition was passed on 18.2.1958. Final decree was passed on 12.4.1974 allotting Ac.0.028 decimals out of plot No.561 and Ac.0.004 decimals appertaining to plot No. 714 to the original plaintiff and the balance Ac.0.032 decimals from plot No. 561 were allotted to the defendants. Thereafter, the original plaintiff filed an application in the executing court to take delivery of possession of the portion of plot No. 561 allotted to him and a Civil Court Commissioner was directed to effect delivery of possession. After

possession was delivered, and objection was filed on behalf of one of the defendants alleging, inter alia, that the Commissioner had delivered possession of an area in excess of the area allotted to the plaintiff. The executing court accepted such contention and set aside the report of the Commissioner and directed the parties to take another Civil Court Commissioner to deliver possession.

The said order of the executing court was challenged in the High court in Misc. Appeal No. 6 of 1977 which was disposed of by order dated 9.2.1977. It was directed in the said order that before effecting delivery of possession, the Commissioner should demarcate the respective areas allotted to the parties and submit a report along with map indicating the position and the executing court thereafter should hear the parties on such report and finalise the matter. Thereafter, the defendants also filed an execution case to take delivery of possession of the land allotted. A Commissioner was deputed, but his report was not accepted as the same was not in accordance with the direction contained in the judgment of the High Court in M.A. No. 6 of 1977. Ultimately, another Commissioner was deputed and the report of the Commissioner having been accepted by the executing court, the matter came upto the High Court in Civil Revision Nos.381 & 382 of 1985. In the said Civil Revisions, the present petitioners had, inter alia, contended that the report of the Commissioner was not in accordance with the final decree and the plaintiff having been allotted only Ac. 0.028 decimals out of plot No. 561, allotment of Ac.0.029 decimals to him was illegal and against the final decree itself. Though noticing the aforesaid contention of the petitioners, the learned Judge (late Justice R.C. Patnaik, as he then was) observed as hereunder:-

"4. Having heard the learned counsel for the parties, I feel, I need only entertain the objections relating to the land over which there runs a drain and which is also used as sweeper's passage. As I have already indicated, that land is a narrow strip at the foot of plot No. 561 which is shown in a different colour, i.e. violet. Obviously, that has not been shown either red or yellow and it runs at the foot of the lands allotted to both the parties, i.e. the land allotted to the plaintiffs as well as to the defendants. Therefore, that land should be allotted to each of the parties in proportion to the extent it runs adjacent to the lands of the respective parties, that is to say, the portion in the map which is located below the yellow portion should go to the share of the plaintiff and the rest of the portion which is located below the red portion should be allotted to the defendants. Only by this, process equity would be done. It is admitted that the latrine of the defendants stands on the south-eastern corner of the red portion and that of the plaintiff's is located on the south-western corner of the yellow portion and service of the sweeper is essential. Therefore each should bear the burden and I accordingly direct. The Commissioner be directed by the learned Subordinate Judge to prepare and submit a fresh report in accordance with the direction given by me regarding the Sweeper's passage as aforesaid."

Thereafter in accordance with the direction of this Court, the Commissioner submitted a fresh report as per which the plaintiff got an area of Ac.0. 029-8 links in plot No. 561 and the petitioners got an area of Ac.0.029-2 links out of plot No.561 after adjustment relating to Sweeper's passage. The executing court accepted the said report on 6.11.1990. Against the said order, the present petitioner filed Civil Revision No. 107 of 1991, which was disposed of on 15.7.1991 by S.C. Mohapatra, J, who after referring to the earlier decision in Civil Revision Nos. 381 & 382 of 1985 observed as follows:-

".....Thus, this Court confined the objection only to the drain and passage. In all other respects, delivery of possession becomes final. There is no dispute that the Commissioner has now divided the drain and the sweeper's passage.

2. Mr. Bose, learned counsel for the petitioner submits that executing court cannot go behind the final decree and accordingly, executing court ought to have examined whether the possession was delivered in accordance with the final decree. In case there would have been no order as in the Civil Revisional would have examined the question. After both parties were heard and this Court confined the objection only to the drain and sweeper passage other questions have become final and it is not open to the petitioner to widen the scope again. Accordingly, there is no merit in the civil revision which is dismissed."

After the dismissal of the aforesaid Civil Revision, the present Review application have been filed on 1.10.1991 seeking to review the judgment of R.C. Patnaik, J, dated 6.4.1987 in Civil Revision Nos. 381 and 382 of 1985. As expected, there is a delay of more than four years in filing such review applications.

3. It is contended by the counsel for the petitioner that the report of the Commissioner is contrary to the final decree and could not have been accepted. It is further contended that though such contention was raised specifically before the learned Single Judge who had disposed of Civil Revision Nos. 381 and 382 of 1985, the said contention was not considered either inadvertently or illegally and the omission to consider such a vital contention amounts to an error of law apparent on the face of record requiring review. To explain the delay, it is contended that the petitioners were not aware of the impact of the decision in the two Civil Revision and only after disposal of Civil Revision No. 107 of 1991, they became aware of the implication of the earlier judgment and thereafter have filed the review applications without any further delay. It has been prayed that the delay in filing the review applications should be condoned by applying the principles of sections 5 and 14 of the Limitation Act. Reliance has been placed on several decisions of the Supreme Court to the effect that the question of limitation should be liberally construed and no person should be allowed to suffer for the mistake committed by his counsel.

The prayer for condonation of delay has been stoutly resisted by the counsel appearing for the legal representatives of the original plaintiff-opposite party. It is also contended that there is no error of law apparent on the face of record to

review the earlier judgment.

4. The question of review of the earlier decision in Civil Revision Nos.381 and 382 of 1985 at this stage does not merit any consideration in view of the intervening circumstances. After disposal of the two Civil Revisions, the matter continued before the executing court and ultimately the question cropped up before this Court in Civil Revision No. 107 of 1991. In the said Civil Revision, this Court declined to interfere on the ground that the matter was concluded in the earlier Civil Revisions. There is no attempt to seek review of the order passed in Civil Revision No. 107 of 1991. The effect of the observations in the earlier Civil Revisions has already been considered in the subsequent Civil Revision. Any attempt to review the decision in the earlier two Civil Revisions would also amount to reviewing the decision of the High Court in the subsequent Civil Revision.

5. Apart from the aforesaid legal hurdle. I hardly see any scope for reviewing the decision of this Court in the two Civil Revisions. The jurisdiction of a Court to review an earlier decision, under Order 47. Rule 1 of the Code of Civil Procedure, cannot be equated with appellate jurisdiction. The scope of review is quite limited as well as well defined. As observed by G.B. Patnaik, J, (as he then was) in the decision reported in 76 (1993) C.L.T. 692 (Durga Charan Sahu and another v. Ramachandra Sahu and others): -

.....In order that an error may be a ground for review it must be one apparent on the face of record which means an evident error and docs not require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no court would permit such an error to remain on the record. The error may be one of fact or one of law, but the error of law must be definite and docs not admit of any ambiguity or discussion. But whether it is an error of law or an error of fact, it must be an error of inadvertence. A conclusion arrived at by process of conscious reasoning cannot constitute an error of law apparent on the face of the judgment to be reviewed under Rule 1 of Order 47, Code of Civil Procedure....."

It is not that on the earlier occasion this Court was not aware of the present contention of the petitioners, but the learned Judge was of the opinion that only one of the contentions relating to some other point was worth consideration and the other points did not merit any consideration. It cannot be said that the error, if any, was apparent on the face of record. The grievance of the petitioners could have been mitigated by an appellate court, if at all, and not by the same court exercising limited jurisdiction of review under Order 47. C.P.C. Therefore, on merit also. I am not inclined to hold that it is a fit case where the earlier judgment is required to be reviewed.

6. In view of the aforesaid discussion, there may not be any necessity for considering the question of limitation. As a matter of fact, before considering the review application, the question of limitation should have been thrashed out.

However since there was a direction earlier by an Hon''ble Judge of this Court that the question of limitation shall be considered along with the merit of the Civil Review applications. I have kept it reserved for disposal along with the review application. The judgment sought to be reviewed was rendered in April, 1987. Thereafter the matter proceeded in the execution case for quite some time and the report of the Commissioner was accepted some time in 1990, necessitating a subsequent revision numbered as Civil Revision No. 107 of 1991. It cannot be said for all these years, the petitioners were not aware of the implication of the judgment in the earlier Civil Revision Nos. 381 and 382 of 1985. Even in Civil Revision No. 107 of 1991, it was opined that the matter was concluded by the earlier two Civil Revisions. Thereafter also, the petitioners took further period of about two and half months to file the review applications. No satisfactory explanation has been offered by the present petitioners regarding the long period of delay particularly the period between 1987 till 1991, when the matter came up before this Court in Civil Revision No. 107 of 1991. Even though the question of limitation is to be construed liberally. I do not think, it is a fit case where delay in filing the Review applications and the applications for condonation of delay deserves to be condoned.

7. In the result, the Civil Review applications and the applications for condonation of delay are rejected. There will, however, be no order as to costs.