

(2001) 02 KL CK 0009

In the High Court Of Kerala

Case No : R.P. No. 370 of 1997 in S.A. No. 491 of 1989

Saramma

APPELLANT

Vs

Mathews and Others

RESPONDENT

Date of Decision : 12-02-2001

Acts Referred:

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

Citation : (2001) 1 KLJ 521

Hon'ble Judges : D. Sreedevi, J

Bench : Single Bench

Advocate : Siby Mathew and A.A. Mohamed Nazir, for the Appellant; V. Giri, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Mrs. Justice D. Sreedevi

1. By judgment dated 26.3.1997 this Court allowed the appeal and the decree and judgment in A.S.No. 221/87 were set aside and the decree and judgment of the trial court were restored. The first respondent in the appeal filed the above review petition on the ground that there are errors apparent on the face of the judgment, that this Court has not made proper evaluation of evidence, that the father of the plaintiff and defendants was holding possession of 1.50 acres of land in Sy. No. 169/1D at the time of his death and that the observations and reasonings contained in para 2 of the judgment appealed against are against the facts and circumstances of this case. Learned counsel for the respondents (appellants in the second appeal) submitted that this review petition is not maintainable as there is no error apparent on the face of the record. Under Order 47 Rule 1 CPC a judgment is open to review, if there is a mistake or 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. Under Order 47 Rule 1 CPC, it is not permissible for

an erroneous decision to be reheard and corrected. The Supreme Court in the decision reported in Parsion Devi and Others Vs. Sumitri Devi and Others, explained what is meant by erroneous decision. It reads as follows:

There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise.

2. Here in this case, in para 2 of the grounds in the review petition the petitioner states as follows: "If a proper evaluation of evidence is made, it can be seen that the plaintiff's case is more probable". Then again in para 3 of the grounds the petitioner states: "It can be seen from the evidence of DW1 that Sri.Varkey Mathai, father of plaintiff and defendants, was holding possession of 1.50 acres in Sy. No. 169/1 at the time of his death". Again in para 4 of the grounds she states: "the observations and reasonings contained in paragraph 2 of the judgment of this Court is against the facts and circumstances of the case and is liable to be reviewed". From the above statements it can be seen that according to the petitioner there is an erroneous decision. If it is an erroneous decision, the proper forum is to file an appeal and not to file a petition for review. In the light of the above decision of the Apex Court, I find that this petition is not maintainable under Order 47 Rule 1 CPC.

In the result, this review petition is dismissed.