
(2015) 02 KL CK 0232

In the High Court Of Kerala

Case No : R.P. No. 931 of 2014 in R.S.A. No. 590 of 2006

The Forester, Parappa Section Forest and Others

APPELLANT

Vs

K. Narayana Bhat

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 27, Order 47 Rule 1

Citation : (2015) 02 KL CK 0232

Hon'ble Judges : K. Harilal, J

Bench : Single Bench

Advocate : M. P. Madhavankutty, Spl. Govt. Pleader, for the Appellant; Jacob E. Simon, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K. Harilal, J—The review petitioners herein are the appellants in the regular second appeal, which was dismissed on 31/7/2014 confirming the concurrent findings of the courts below. They are the defendants in the original suit No. 78/2001 of the Munsiff's Court, Kasaragod filed by the respondent herein. The above original suit was one for a prohibitory injunction restraining the defendants/review petitioners from trespassing into plaintiff A schedule property and from cutting and removing the trees standing in the said property and also for damages. According to the respondent/plaintiff, the plaintiff schedule property absolutely belongs to him by virtue of the title deed and he was in possession and enjoyment of the said property. The review petitioners/defendants herein contended that the ownership and possession of the above plaintiff schedule property are vested with the Government free from all encumbrances and the right, title and interest of the owner or any other person thereon shall stand extinguished by the commencement of the Ordinance No. 6/2000 published under the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003, (for short, the "Act"). After considering the evidence on record, the trial court decreed the suit on a finding that no document or any kind of evidence

had been produced by the defendants to substantiate the contention that the plaint schedule property is vested in the Government under the said Ordinance promulgated under the Act. The first appellate court also concurred with the said finding and dismissed the appeal. Feeling aggrieved, though the defendants had filed the above second appeal, this Court also affirmed the concurrent findings and dismissed the appeal. So also no question of law was left undecided by the courts below.

2. Now this review petition is seen filed mainly on two grounds. It is submitted that the original of Annexures-B1 to B3, produced along with this review petition, were not produced along with the appeal memorandum of regular second appeal, due to a mistake. These documents ought to have been filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908, and, had they produced Annexures-B1 to B3 in accordance with the proper procedure in the second appeal, the regular second appeal would have been allowed, after setting aside concurrent findings of the trial court and Appellate Court. Secondly, it is contended that the impugned judgment was passed without appreciating the bar of jurisdiction under Section 13 of the Act in its correct perspective. In fact, civil court had no jurisdiction to pass the impugned decree as the jurisdiction was expressly barred under Section 13 of the Act and the impugned decree is a nullity in law. But this Court could not appreciate the bar of jurisdiction in its correct perspective in the second appeal.

3. The learned Special Government Pleader advanced arguments in support of the grounds raised in the memorandum of review petition. The learned Special Government Pleader submits that had the Annexures-A1 and A2 been produced in the second appeal at the time of hearing, this Court would not have dismissed the second appeal. It is also contended that the court below went wrong by finding that a civil court had jurisdiction to entertain an original suit and the bar under Section 13 of the Act would not be applied in the instant case.

4. Per contra, the learned counsel for the respondent contended that the review petition itself is not maintainable as none of the grounds raised in the memorandum of review petition are in conformity with the statutory mandate under Order XLI Rule 1. It is also contended that another interlocutory application filed along with Annexures-B1 to B3 under Order XLI Rule 27 is also not maintainable as the averments in the affidavit filed along with the petition are not in conformity with the requirements specifically mandated under Order XLI Rule 27 of the C.P.C.

5. I heard the learned Special Government Pleader and the learned counsel appearing for the respondent in extenso and have given my anxious consideration to the rival submissions at the Bar. The question to be considered is whether the review petitioners have made out sufficient grounds to review the judgment dismissing the second appeal, which is impugned in this review petition. Put it differently, the question is whether there is any mistake or error apparent on the face of the record or whether the review petitioners have a case

that from the discovery of a new and important matter or evidence, which, after exercise of due diligence, was not within their knowledge or could not be produced by them at the time when the decree was passed.

6. Going by the grounds raised in the memorandum of review petition, it is seen that the petitioners have no case that they have discovered a new and important matter or evidence which, after the exercise of due diligence, was not within their knowledge or could not be produced by them at the time when the decree was passed. So also, there is no ground to the effect that there is an error apparent on the face of the record. Though the learned counsel for the review petitioners contended that the judgment was passed without appreciating the facts, evidence and law in its correct perspective, and that amounts to an error on the face of the records, I am unable to accept the said contention, because a wrong appreciation of evidence, even if true, is not an error apparent on the face of the record.

7. As regards the finding with respect to the jurisdiction, going by the impugned judgment, it could be seen that in paragraphs 11 to 14, this Court has considered in detail the question whether there is any illegality or impropriety in the concurrent findings of the courts below that the suit is not hit by bar under Section 13 of the said Act and thereafter concurred with the finding of the court below, that since the review petitioners had miserably failed to produce any documents to substantiate their contention to show that the plaint A schedule property is vested with the Government by the commencement of the Act, the bar of jurisdiction provided under Section 13 of the Act would not apply to the instant case. I am of the considered opinion that the said finding was made on the basis of the lack of material to prove the appellants' contentions that the plaint schedule property is a land vested with the Government under the Act by virtue of the notification made under the Act. In short, none of the grounds raised in this review petition are in conformity with the statutory mandate under Order XLI Rule 1 of the C.P.C. In this analysis, this review petition is liable to be dismissed in limine.

8. Coming to the petition filed under Order XLI Rule 27 of the Code of Civil Procedure 1908, to accept Annexures-B1 to B3, I find that the affidavit filed along with the application is also not in conformity with the statutory mandate provided under Order XLI Rule 27 of the C.P.C. Going by the affidavit, the review petitioners have no case that notwithstanding the exercise of due diligence, Annexures-B1 to B3 were not within their knowledge or could not, after the exercise of due diligence, be produced by them at the time when the decree was passed against the review petitioners. It is pertinent to note that those Annexures are the documents which could have been produced in the trial court or the first appellate court or in the second appeal before the passing of the impugned judgment. Annexures-B1 to B3 are the photocopies of gazette notification and erratum notifications issued under the said Act. On an analysis of the pleadings in the original suit, it could be seen that the entire pleadings were

set up on the basis of their definite contention that the plaint schedule property is vested with the Government by the commencement of the said Act by virtue of the notification made there under. In the absence of any reason for not producing the said documents, either in the trial court or in the first appellate court, or before this Court before the pronouncement of the impugned judgment, the same cannot be accepted in evidence under a review petition. Hence I find that the petition purportedly filed under Order XLI Rule 27 is liable to be dismissed in limine and I do so. The above view is supported by the decisions reported in *Geetha Viswanathan and Others Vs. Sasidharan and Mahavir Singh v. Naresh Chandra* [2001 (1) KLT SN 2] .

9. It is equally well settled that additional evidence cannot be permitted to be adduced so as to fill up the lacunae or to patch up the weak or missing points in the case. In a review petition to review the judgment dismissing the second appeal, the unsuccessful appellant cannot claim as of right, admission of additional evidence, to defeat the decree passed by trial court, and confirmed in first appeal and second appeal. The appellate court should not travel outside the record of the lower court and cannot take evidence in a petition to review the judgment dismissing the appeal.

10. It is to be borne in mind that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1 of the C.P.C. The review petition can be entertained on the ground of error apparent on the face of the record; but an error apparent on the face of the record must be such an error, which must strike on mere looking at the record and would not require any long drawn process of reasoning's on the points where there may conceivably be two opinions. In short, the review is, by no means, an appeal in disguise whereby an erroneous decision is rebuilt and corrected. The above view is well supported by the decisions laid down by the Apex Court in *Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury*, AIR 1995 SC 455 : (1994) 7 JT 536 : (1994) 4 SCALE 985 : (1995) 1 SCC 170 : (1994) 5 SCR 503 Supp and *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, AIR 1964 SC 1372 : (1964) 5 SCR 174 .

11. Though the learned Special Government Pleader produced the decisions in *A.K. Balan v. P.K. Kesavan and Another* [2006 KHC 1019] and *P. Murukankutty Vs. Amarnath Shetty*, (2006) 3 KLJ 891 : (2006) 4 KLT 971 , I find that these decisions are totally irrelevant as regards the matter in issue involved in this review petition.

In the result, the review petition and the unnumbered interlocutory application filed under Order XLI Rule 27 of the C.P.C. will stand dismissed.