

Subha@ Bhasura vs Ramesan

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Court : Kerala

Decided On : Aug-05-2024

Judge : Honourable Mrs. Justice C.S. Sudha

Appeal No. : RP/692/2024

Appellant : Subha@ Bhasura

Respondent : Ramesan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE C.S. SUDHA
MONDAY, THE 5TH DAY OF AUGUST 2024 / 14TH SRAVANA, 1946
RP NO. 692 OF 2024 AGAINST THE JUDGMENT DATED 30/05/2024
IN RSA NO.434 OF 2023 OF HIGH COURT OF KERALA REVIEW
PETITIONERS/APPELLANTS/DEFENDANTS 1 AND 3:

1 SUBHA& @ BHASURA AGED 68 YEARS W/O. PONNAPPAN,
CHERUKARA, NIDHEESH BHAVANAM, 2 NIDHEESH AGED 44
YEARS S/O. PONNAPPAN, CHERUKARA, NIDHEESH BHAVANAM,
KARUNAGAPPALLY TALUK, KOLLAM REPRESENTED BY HIS
POWER OF ATTORNEY HOLDER SUBHA @ BHASURA, W/O.

PONNAPPAN, CHERUKARA, NIDHEESH BHAVANAM, AZHEEKAL P.O, SRAYIKKADU THURA, ALAPPAD VILLAGE, KARUNAGAPPALLY TALUK, KOLLAM, PIN - 690547 BY SMT.SUBHA @ BHASURA (Party-In-Person)

RESPONDENTS/RESPONDENTS/PLAINTIFF & 2ND DEFENDANT: 1 RAMESAN AGED 63, S/O. VELUTHAKUNJU, CHERUKARA VEEDU, 2 BABITHA @ NIDHI AGED 44, D/O. PONNAPPAN, CHERUKARA, NIDHEESH BHAVANAM, THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 05.08.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.S.SUDHA, J.

----- Dated this
the 5th day of August 2024

ORDER

This review petition has been filed by the appellants in R.S.A.No.434 of 2023, seeking review of the judgment dated that there are apparent errors on the face of the record.

2. Heard the first review petitioner, the party in person.

3. The counter petitioners herein who are the respondents

in the appeal, filed O.S.No.277/2012 seeking partition of the plaint schedule property. The defendants therein including the review petitioner herein contended that their predecessor-in-interest as per Ext.B2 Will dated 07/05/1993 had bequeathed the entire property to the third defendant, that is, the second review petitioner herein. The trial court finding that the Will relied on by the defendants had not been proved, rejected the contentions of the defendants and decreed the suit. Aggrieved, defendants 1 and 3, who are the review petitioners herein, filed the second appeal. When the appeal came up for admission, the learned counsel appearing for the appellants was heard. On going through the materials on record

it was found that the mandatory formalities contemplated under Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872 had not been complied with. As the due execution of the Will had not been proved, it was found that no substantial question of law arose in the second appeal and hence dismissed the appeal.

4. The first review petitioner who is present in Court

submits that despite witnesses being examined, there has been a wrong appreciation of the evidence on record. As there are errors apparent on the face of the record, the judgment is liable to be reviewed.

5. The power of review cannot be exercised as an inherent power nor can an appellate power be exercised in the guise of power of review. [Shri Ram Sahu v. Vinod Kumar Rawat,

(2021) 13 SCC 1]. As held in Meera Bhanja v. Nirmala Kumari

Choudhury, (1995) 1 SCC 170, review proceedings are not by way of an appeal and has to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of the Code. In Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715, the Apex Court held that, 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 that 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. In the exercise of the jurisdiction under Order XLVII, Rule 1 of the CPC, it is not permissible for an erroneous decision to be reheard and corrected. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise.

6. If the review petitioners are of the opinion that the

finding of this Court is wrong, the remedy is to challenge the impugned judgment. As there is no merit in this review petition, the same is liable to be dismissed and I

do so. Interlocutory applications, if any pending, shall stand closed. Sd/-
C.S.SUDHA JUDGE ami/

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