

Nikitha vs Sheeja

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Court : Kerala

Decided On : Aug-22-2023

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : RP/251/2023

Appellant : Nikitha

Respondent : Sheeja

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR TUESDAY, THE 22ND DAY OF AUGUST 2023 / 31ST SRAVANA, 1945 R.P.NO. 251 OF 2023 AGAINST THE JUDGMENT DATED 20.01.2023 IN O.P.(FC) NO.601 OF 2022 OF THE HIGH COURT OF KERALA REVIEW PETITIONER/RESPONDENT: NIKITHA, AGED 30 YEARS, D/O RIHITHA RAJ, THOUFIEEK MANZIL, MATHRIKA NAGAR-12, KILIKOLLOR CHERRY, KILIKOLLUR VILLAGE, KOLLAM, PIN - 691004. BY ADVS.M.T.SURESH KUMAR DARSAN SOMANATH P.R.JAYASANKAR MANJUSHA K SREELAKSHMI SABU

RESPONDENTS/PETITIONERS: 1 SHEEJA, AGED 55 YEARS, W/O ABDUL SATHAR, SHIAS MAZIL PARAKULAM, UMayANALoor P O, KOLLAM DISTRICT, PIN - 691589. 2 SHEMIN, AGED 34 YEARS, S/O ABDUL SATHAR, SHIAS MAZIL PARAKULAM, UMayANALoor P O, KOLLAM DISTRICT, PIN - 691589. BY ADV ARUN BABU THIS REVIEW PETITION HAVING COME UP FOR FINAL HEARING ON 16.08.2023, THE COURT ON 22.08.2023 DELIVERED THE FOLLOWING:

ORDER

P.G. Ajithkumar, J.

The respondent in O.P.(FC) No.601 of 2022 has filed this petition for review under Section 114 read with Order XLVII, Rule 1 of the Code of Civil Procedure, 1908.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3. The petitioner has filed O.P.No.661 of 2016 before the Family Court, Kollam. She sought a decree for realisation of gold ornaments and money amounting to Rs.19,60,000/-.

She filed I.A.No.1309 of 2016 for attachment before judgment

of two items of properties; 0.136 Ares of property along with a shop room (A-schedule) and 6.04 Ares of property along with a double storied residential building (B-schedule). An

order of attachment was granted. The respondent later filed

I.A.No.6 of 2022 seeking to lift the attachment. That petition was filed invoking the provisions of Order XXXVIII, Rule 9 of the Code. The Family Court dismissed that petition. The respondents filed O.P.(FC) No.601 of 2022 challenging the

order of the Family Court.

4. This Court as per the judgment dated 20.01.2023

allowed O.P.(FC) No.601 of 2022, whereby I.A.No.6 of 2022 filed by the respondents in O.P.No.661 of 2016 was allowed. The petitioner would contend that the said judgment suffers from errors apparent on the face of record and hence the same is liable to be reviewed. The errors pointed out are that the valuation certificate furnished by an Engineer and also the age certificate of the building issued from Mayyanad Grama Panchayat should not have been accepted. The age certificate is an electronic record and could not be acted upon without a proper certification. Another ground for review is that provisions of Order XXXVIII, Rule 9 of the Code can apply only when sufficient security to satisfy the decree that may be passed in the proceedings is furnished and therefore the said provisions wrongly invoked to allow I.A.No.6 of 2022. It is also contended that in the light of the claim staked by the petitioner over A-schedule property of 0.136 Ares and the

building thereon in O.P.No.725 of 2016 filed by her before the Family Court, Kollam, the attachment should not have been lifted. Denial of sufficient opportunity to submit the petitioners case also is alleged.

5. The valuation certificate was prepared by a

Chartered Engineer, who retired as Executive Engineer from the Kerala Local Self Government Department. The petitioner does not have a case that the said certificate, which was produced as Ext.P5 in the original petition, is a fabricated one. The contention is only that the valuation was done improperly. In regard to the age certificate of the building issued from the Mayyanad Grama Panchayat it is contended that it is not accompanied by a certificate under Section 65B of the Indian Evidence Act, 1872 and therefore it should not have been acted upon. The said certificate was issued from the Grama

Panchayat with electronic signature of the authorised signatory. Its authenticity can well be ascertained by anyone using the public key. Such a certificate carries authenticity in the light of the provisions of Section 5 of the Information Technology

Act, 2000. Therefore, there is nothing wrong in the chartered engineer who issued Ext.P5 valuation certificate to place reliance on the age certificate of the building issued by the Mayyanad Grama Panchayat.

6. The valuation of B schedule property of 6.04 Ares

of the land and the building thereon was considered just to ascertain the probable value of that property. When the valuation is Rs.67 lakhs, acceptance of the said property as sufficient to satisfy a claim of Rs.19,60,000/-, which is only a claim in O.P.No.661 of 2016, and not a decree cannot be said totally incorrect. The purpose of attachment of a property before judgment is to secure the interest of the claimant in case of passing a decree in his favour. In that view of the matter, it cannot be said that there occurred any error in accepting B-schedule property of 6.04 ares and the building thereon as sufficient to satisfy the claim of the petitioner, if ultimately she wins.

7. I.A.No.6 of 2022 was filed invoking the provisions of Order XXXVIII, Rule 9 of the Code. Of course, a petition for

confining the attachment to a part of the property and lift the conditional attachment in respect of the remaining property is not possible under Order XXXVIII, Rule 9 of the Code. It should have been under Order XXXVIII, Rule 5 read with Rule 6 of the Code. Rule 6 of Order XXXVIII of the Code provides that, if the defendant fails to furnish security, the court may attach the property or such portion thereof as is sufficient to satisfy a decree that may be passed in the suit. Simply because a wrong provision is quoted in the petition, the remedy legally entitled by a party cannot be denied. Therefore the said contention is not a sufficient reason for a review.

8. The fact that the petitioner stakes an independent

claim over A-schedule property in a different proceedings is not a consideration while deciding the question, whether or not the attachment is liable to be lifted. Therefore, the contention of the petitioner has an independent claim in respect of the A-schedule property in O.P.No.725 of 2016 is also not a reason for review.

The other contention that the petitioner was not given sufficient opportunity to present her case is without any basis.

9. In *Meera Bhanja v. Nirmala Kumari Choudhury*

[(1995) 1 SCC 170] the Apex Court held that 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 Code.

10. In *Parsion Devi v. Sumitri Devi* [(1997) 8 SCC 715] the Apex Court, in the context of the power of review under Order XLVII, Rule 1 of the Code 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 justifying the Court to exercise its power of review under Order XLVII, Rule 1 of

the Code. In the exercise of the jurisdiction under Order

XLVII, Rule 1 of the Code, 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.

11. In *Lily Thomas v. Union of India* [(2000) 6

SCC 224] the Apex Court reiterated that, the power of review can be exercised for correction of a mistake but not to substitute a view. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review.

12. In *Anantha Reddy N. v. Anshu Kathuria*

[(2013) 15 SCC 534] the Apex Court held that, the review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for a review. The mistake apparent on record means

that the mistake is self-evident, needs no search, and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit the rehearing of the matter on merits.

13. The Apex Court in S.Madhusudhan Reddy v. V.Narayana Reddy and others [2022 SCC OnLine SC 1034 : 2022 (5) KLT SN 18] held that the Courts jurisdiction of review is not the same as that of an appeal. A

judgment can be open to review if there is a mistake or an

error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII, Rule 1 of the Code.

14. No ground sufficient in the light of the decisions referred to above to review the judgment in O.P.(FC) No.601 of 2022 is made out. Therefore, this petition for review is dismissed. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE dkr

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