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Court : Patna

Decided On : Oct-06-1994

Judge : Asok Kumar Ganguly, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 47, Rule 1

Appeal No. : Civil Review No. 3 of 1976

Appellant : Hem Narain Singh and ors.

Respondent : Ganesh Singh and ors.

Advocate for Def. : Markandeya Singh and Surendra Prasad Singh

Advocate for Pet/Ap. : Balbhadra Singh and Nan Kumar Singh

Disposition : Petition dismissed

Judgement :

Asok Kumar Ganguly, J.

1. This is an application for review of the judgment and order passed on 24th Sept. 1974 in Second Appeal No. 485 of 1970 whereby the said second appeal was dismissed by a learned single Judge of this Court.

2. For deciding this review petition, no detailed investigation into the fact is necessary. Therefore, the bare facts which are necessary for decision in this case

are as follows:--

The second appeal was filed by the plaintiffs-petitioners against the judgment and decree passed in Title Appeal No. 33 of 1964/49 of the 1966 on 29th April, 1970 by the Additional District Judge, Darbhanga whereby he was pleased to affirm the judgment and decree dated 21st February, 1964 passed by the Subordinate Judge, Additional Court of Samastipur in Title Suit No. 13/12 of 1958/1960. The said second appeal was admitted by this Court on 27th March, 1973. Thereafter the matter was taken up for hearing on the basis of an office notes by a learned single Judge of this Court. After hearing the learned counsel for the parties, the learned single Judge was of the view that the said second appeal ought to be dismissed as the same has abated as a whole. The learned Judge of this Court while passing the judgment under review took a note of the fact that the suit was dismissed by the trial court on the ground that it could not proceed for non-impleading the heirs of the deceased defendants-1st party. His Lordship also held that before the first appellate Court some of the defendants/respondents died and their heirs and legal representatives were not brought on the record within the period specified by law.

3. His Lordship further noted that the question of abatement of the entire appeal was heard as a preliminary issue by the first appellate Court and on consideration of the

rival contentions of the parties, the first appellate Court came to a finding that the suit has abated and the first appellate court also came to the additional finding that there is no merit in the appeal. During the pendency of the second appeal also two respondents, namely, respondents Nos. 24 and 61 died and a note to this effect was made vide order dated 18th January, 1974.

4. Before the learned Judge taking the second appeal for hearing, learned counsel for the respondents submitted that the suit itself is bad as a whole and even if there is no further death of respondents Nos. 24 and 61 during the pendency of the second appeal, this appeal could not proceed and ought to be dismissed as a whole.

5. The learned Judge deciding the second appeal on a consideration of the aforesaid submission and after hearing the learned counsel for the appellants and perusal of the materials on record came to the finding that the appeal has abated as a whole and as such dismissed the appeal as having been abated.

6. The present application for review was filed only on the following grounds:--

(a) Learned counsel for the appellants could not clarify the position or look into the office record to meet the points raised.

(b) That the appellants' Senior Counsel and Junior Counsel engaged in the matter could not point out the particular aspect of the case under some misapprehension of the points raised in the office notes and the learned Judge dismissed the second appeal even after the same was admitted by the Court long back.

7. It is settled beyond any manner of controversy that the grounds of review are extremely limited. The persons seeking review of the judgment or order must bring his case within the four corners of the provisions of Order XLVII Rule 1 of the Code of Civil Procedure. It goes without saying that the purpose of review application cannot be rehearing for the purpose of seeing whether a different conclusion on merit could be adopted. (See *Chhajju Ram v. Neki* reported

in (1922) 49 Ind App 144 at page 152) : (AIR 1922 PC 112).

8. Learned counsel in support of the review application has placed reliance on the decision of *Moran Mar Basselios Catholicos v. The Most. Rev. Mar Poulouse Athanasius* reported in AIR 1954 SC 526 which is also reported in 1955 SC 520. In that case, the expression 'errors apparent on the face of the record' have been construed to mean that it is an error apparent on the face of the record, if the judgment under review does not deal effectively and determine an important issue in the case on which depends the title of the plaintiffs and the maintainability of the suit. In the instant case, the said analogy cannot be applied inasmuch as the learned Judge dismissing the second appeal has dealt with the question of abatement and has come to the conclusion that the suit has abated as a whole. Whether that conclusion is erroneous or not cannot be reopened in the review

petition in view of the accepted legal position since the decision of Privy Council in *Chhajju Ram v. Neki* : (AIR 1922 PC 112) (supra).

9. Learned counsel for the respondents relied upon various decisions in support of the contention that the instant application for review is not maintainable on the grounds as stated above. For the purpose of decision of this case all those decisions need not be discussed. This Court, however, feels that the decision in *Thungabhadra Industries Limited v. The Government of Andhra Pradesh* represented by the Deputy Commissioner of commercial Taxes, Anantapur reported in AIR 1964 SC 1372 cited by the learned counsel for the respondents is relevant to the issue. In paragraph 11 of the said judgment, the learned Judge of the Supreme Court made a distinction between a mere erroneous decision and a decision vitiated by 'error apparent on the face of the record.' In the said judgment, their Lordships of the Supreme Court were of the same view, as was expressed in the decision of *Chhajju Ram v. Neki* (AIR 1922 PC 112) (supra) that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected.

10. However, the specific ground which has been taken in the petition for review that

the learned counsel for the appellant could not properly explain the legal position, cannot be a ground for review. In this connection reference may be made to the case of *Soosai Anthony D'costa Nicholas D'Costa v. Francis Roche Anthony Kurush Roche* reported in AIR 1962 Mad 304 wherein in paragraph 8 a similar ground urged for review has been negatived. In that decision it has been held that where the learned counsel, in spite of instructions from his client, failed to argue a point either designedly or by inadvertence, the same cannot be a ground for review. The said Madras decision has been subsequently followed in *Bhagwati Singh v. Deputy Director of Consolidation and another* reported in AIR 1977 All 163.

11. In view of the discussion aforesaid,

this review petition is dismissed as not maintainable. There will be no order as to costs.

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