

Jamuna Prasad Vs. Xith Additional District Judge, Allahabad and Others

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Court : Allahabad

Decided On : Nov-02-1998

Reported in : 1999(1)AWC449

Judge : O.P. Garg, J.

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

Appeal No. : C.M.W.P. No. 35036 of 1998

Appellant : Jamuna Prasad

Respondent : Xith Additional District Judge, Allahabad and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Ram Kishor Gupta, Adv.

Judgement :

O.P. Garg, J.

1. Heard Sri R. K. Gupta learned counsel for the petitioner who was one of the plaintiffs in Suit No. 157 of 1987. The order dated 14.9.1998 passed by Sri A. K. Kakkar, XIth Additional District Judge, Allahabad on a review petition has been challenged.

2. The petitioner Jamuna Prasad who is the guardian of Sri Ram, a person of unsound mind had filed Suit No. 157 of 1987 as next friend in which the reliefs of cancellation of sale deed dated 20.6.1986 executed in favour of respondent Nos. 2 and 3 as well as of permanent injunction were claimed. With the filing of Suit No. 157 of 1987, an application for temporary injunction was moved which was allowed by the trial court after hearing the parties on 10.4.1987. Against this order of temporary injunction, the defendant Nos. 2 and 3 filed a Misc. Civil Appeal No. 153 of 1987 which was dismissed by Sri A. K. Kakkar, on 26.8.1998 on merits. It appears that defendant respondent Nos. 2 and 3 filed a review application No. 64 of 1998 which has been allowed by XIth Additional District Judge, Allahabad by the impugned order dated 14.9.1998 a copy of which is Annexure-7 to this writ petition. The order passed by Sri A. K. Kakkar, XIth Additional District Judge on the review application runs as follows :

'3-C is allowed. The judgment dated 26-8:98 is set-aside. 2.11.1998 hearing of the Misc. Appeal.'

3. The learned counsel for the petitioner urged that the learned XIth Additional District Judge, Allahabad has set-aside the order dated 26,8.1998 passed in Appeal No. 153 of 1987 in a most cursory, perfunctory and mechanical manner without applying his judicial mind. It was also urged that the learned XIth Additional District Judge has not recorded any finding that the order dated 26.8.1998 dismissing the appeal was the outcome of any error apparent on the face of the record or that there was sufficient cause to review/recall the order dated 26-8.1998. This submission of the learned counsel for the petitioner is not without force and substance.

4. It is an indubitable fact that Appeal No. 157 of 1987 was dismissed by Sri Kakkar on merits on 26.8.1998. The order dismissing the appeal on merits could not be set-aside in a routine and casual manner. It appears that Sri Kakkar, XIth Additional District Judge, has totally ignored the provisions of Order XLVII, C.P.C. which deal with review of an order. Very strong and convincing grounds have to be established before an order passed on merits can be recalled/reviewed. A positive finding has to be recorded whether the earlier order passed on merits suffers from

the error apparent on the face of the record. Nothing of the kind was done by Sri Kakkar. The order quoted above indicates that Sri Kakkar passed the order in a most slipshod manner inviting serious criticism against himself. The tone and tenor of the order dated 14.9.1998 indicates that Sri Kakkar has not applied his mind to the matter and without recording the findings as to under what circumstances the order dated 26.8.1998 was required to be reviewed/recalled, he has passed the impugned order. His order exhibits total ignorance of the provisions of law. This Court does not approve of the slipshod and careless manner in which the impugned order was passed. It is highly sad and bad that an order passed on merits deciding the appeal, has been set aside without recording any reasons.

5. Emphatic denunciation of the manner in which Sri Kakkar has passed the wholly untenable order and without applying the provisions of law shall be amply reflected if a note of this fact is made and placed on the personal file of Sri Kakkar,

6. The impugned order dated 14.9.1998 has been held to be wholly untenable and, therefore, it cannot be sustained. It is accordingly quashed. This petition is finally disposed of with the direction that XIth Additional District Judge, Allahabad shall decide the review application No. 64 of 1998 afresh by a reasoned order after giving opportunity of hearing to both the parties.

7. A copy of this order shall be sent to the Registrar of this Court for keeping it on the personal file of Sri A.K. Kakkar. Additional District Judge, Allahabad. A copy shall also be sent to Sri Kakkar through the District Judge, Allahabad for his information.