

Review Pet. (C) No. 01/2021

RAJENDRA CHETTRI

PETITIONER (S)

VERSUS

DEVI MAYA CHETTRI & ORS.

RESPONDENT (S)

For Petitioner : Mr. A.K. Upadhyaya, Sr. Advocate
Ms. Rachhitta Rai, Advocate

Date: 17/04/2021

CORAM :

HON'BLE MR. JUSTICE JITENDRA KUMAR MAHESHWARI, CJ.

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ORDER (ORAL)

Heard learned Senior Counsel for the appellant.

2. This Review Petition is arising out of the Judgment dated 23.11.2020 passed in **RFA No.11 of 2017 (Devi Maya Chettri vs. Mahesh Chettri & Ors.)**. Learned Counsel *inter alia* contends that in paragraph 52 of the impugned judgment, the observations made are contrary to the records with respect to the construction of the house. The reference is made to the pleadings of paragraphs No. 18 and 19 of the suit to substantiate his contention.

3. In support of the said contention, reliance has been placed on the Judgment of the Hon'ble Supreme Court in the case of **Dharam Deo Narayan Singh vs State of Jharkhand & Anr.** reported in **(2009) 12 SCC 398**

particularly in para 5 contending that the complete justice must be done within the purview of the scope of Order 47 Rule 1 of Code of Civil procedure, 1908. In view of the said submission, it is urged that the judgment so passed in particular finding of paragraph 52 are contrary to the pleadings of the record.

4. After having heard the learned Senior Counsel and on detail perusal of paragraphs 18 and 19 of the suit, it is clear that it is relating to the fourth floor. While the finding recorded is in general not only for the fourth floor so far as construction of house is concerned. In that view of the matter, in my considered



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opinion there is no error on the face of the records which falls for review under Rules 44 and 45 of High Court of Sikkim Practice and Procedure Rules 2011 read with Section 114 and Order 47 Rule 1 of CPC.

5. In the opinion of this Court, judgment as relied upon by the learned Senior Counsel in the case of ***Dharam Deo (Supra)*** is having no application because in the said case the Circular and other documents was not taken into consideration, therefore, the Hon'ble Apex Court has passed the Order.

6. In view of the foregoing observations, interference in the present case under Order 47 Rule 1 of CPC is not required. Accordingly, this Review Petition stands dismissed.

Chief Justice

jk/avi/amit

