

GAHC010160232024



2024:GAU-AS:13051

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./145/2024

MANDIRA DAS
W/O SRI GIRIDHAR DAS,
NEW COLONY, RAJAMAIDAM, WARD NO. 1, BLOCK NO. 6, JORHAT,
ASSAM

VERSUS

AJIT GHOSH
S/O LATE AMULYA GHOSH,
BIDHAN MARKET, HAKIMPARA, SILIGURI, DARJEELING, WEST BENGAL
734001

Advocate for the Petitioner : MR. J LASKAR,

Advocate for the Respondent : MRS. R DEVI, MR. A R TAHBILDAR

In

Case : RSA/214/2013

MANDIRA DAS
W/O SRI GIRIDHAR DAS
NEW COLONY
RAJAMAIDAM
WARD O. 1

BLOCK NO. 6
JORHT
ASSAM.

VERSUS

AJIT GHOSH and 5 ORS.
S/O LATE AMULYA GHOSH
BIDHAN MARKED
HAKIMPARA
SILUGURI
DARJEELING
WEST BENGAL
PIN

2:HARADHAN DHAR

S/O LATE HARIHAR DHAR
NEWVIL ROAD
WARD NO. 5
JORHAT
ASSAM
PIN

3:ANIL GHOSH

4:AMRIT GHOSH

BOTH ARE SONS OF LATE AMULYA GHOSH

5:TARI GHOSH

6:DULALI RANI GHOSH

BOTH ARE D/O LATE AMULYA GHOSH
ALL ARE RESIDENT OF BIDHAN MARKET
HAIMPARA
SILIGURI
DIST. DARJEELING
WEST BENGAL
PIN

Advocate for : MR.J LASKAR
Advocate for : MS.R DEVI appearing for AJIT GHOSH and 5 ORS.

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

20.12.2024

1. Heard Mr. J. Laskar, learned counsel for the petitioner. Also heard Mr. B. Choudhury, learned counsel appearing for respondent.

2. This review application, under Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 has been filed by the applicant/appellant Smt. Mandira Das praying for review of the order dated 30.07.2024, passed by this Court in RSA No. 214/2013, whereby the said Regular Second Appeal was dismissed.

3. The review application has been preferred by the petitioner on following grounds:-

"I) For that the Hon'ble Court without taking into consideration of pleaded facts of the petitioner more particularly the ground no.XIX of the memo of appeal of the Learned Lower Appellate impugned judgement dated 30.07.2024 was delivered. Hence, this Hon'ble Court may be pleased to review the judgement and order dated 30.07.2024 in the interest of justice.

II) For that a reading schedule of the plaint and schedule of the power of attorney (exhibit 8a) would clearly shows that two different schedule were mentioned, as such this Hon'ble Court may be

pleased to review the judgement and order dated 30.07.2024 considering the fact and circumstances of the case.

III) For that the Hon'ble Court vide aforesaid Judgement and order dated 30.07.2024 this Hon'ble Court observed that the points of law raised by the appellant in the second appeal were not raised by the appellant before the first appellate court, but a reading of memo of appeal of first appellate court wherein ground no.XIX the point was raised before the Learned Lower Appellate Court as such the impugned judgement is required to be reviewed by this Hon'ble Court by taking consideration of the aforesaid facts and in the interest of justice.

IV) For that the petitioner states that respondent - Ajit Ghosh who adduced his evidence as PW1, but in his cross examination he stated that dag no of the suit land as 1356 where the dag no. was mentioned as 1855 and 1856 which made it crystal clear that suit land is not the same land. Hence this Hon'ble Court may be pleased to the judgement dated 30.07.2024.

V) For that evidences of PWs, schedule mentioned in the plaint of the suit and the power of attorney (exhibit-8a) clearly reflects the dag no

mentioned in the plaint and the dag no stated in the cross examination by PWS more particularly PW1 is different. Therefore the impugned judgement is required to be reviewed considering the aforesaid facts of the case.

VI) For that in any view of the matter the judgement dated 30.07.2024 passed in RSA.214/2013 may kindly be reviewed in the interest of justice."

4. Though, the learned counsel for the petitioner has mentioned 6(six) grounds for preferring this review application, however, he has mainly pressed the ground No. 3, i.e. the observation made in the impugned judgment dated 30.07.2024 by this Court, that the points of law raised by the appellant in this second appeal were not raised by her before the First Appellate Court which according to him is an erroneous observation as in ground No. 19 taken before the First Appellate Court, the said point was raised by the appellant. Hence, the learned counsel for the petitioner submits that there is an error apparent on record and therefore, the impugned judgment is liable to be reviewed by this Court.

5. On the other hand, the learned counsel for the respondent has submitted that, this Court, by the impugned judgment, has come to the finding that the substantial questions formulated in the RSA No. 214/2013, is not involved in the present case and reasons for the same have also been stated in the impugned judgment. He, therefore, submits that the grounds taken by the petitioner for preferring this review application cannot be regarded as mistake or error on the face of record which would have affected the outcome of the

regular second appeal, therefore, he submits that the instant review application is not maintainable.

6. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record, including the grounds taken by the petitioner for preferring this review application as well as the judgment passed by this Court in RSA No. 214/2013 on 30.07.2024.

7. This Court, in the aforesaid judgment, has held that the substantial question of law formulated in the RSA No. 214/2013 does not have any bearing on the outcome of the T.S. No. 99/2006 as well as that of T.A. No. 20/2012 and therefore, it came to the finding that the substantial question of law in the aforesaid RSA is not involved in the said appeal.

8. Reasons for arriving at the aforesaid conclusion has been mentioned in Paragraphs Nos. 28,29,30 and 31 of the impugned judgment. The grounds taken by the review petitioner that the observations made by this Court to the extent that point of law raised by the appellant in the second appeal were not raised before the First Appellate Court is not acceptable as no such observation, has been made in the impugned judgment. Moreover, other grounds taken in this review petition does not fall within the purview of conditions stipulated in Order 47 Rule (1) of the Code of Civil Procedure, 1908.

9. In this regard, the observations made by the Supreme Court of India in the case of "**Kamlesh Verma Vs. Mayawati And Others**" reported in "**(2013) 8 SCC 320**;" it is relevant which is quoted herein below:-

"20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

10. Further in the case of "***Union of India Vs. Sandur Manganese And Iron Ores Limited And Others***" reported in "***(2013) 8 SCC 337***," the

Supreme Court of India has observed as follows:-

"23. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. In Parsion Devi v. Sumitri Devi [(1997) 8 SCC 715] , this Court held as under: (SCC p. 719, para 9)

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an 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 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

24. This Court, on numerous occasions, had deliberated upon the very same issue, arriving at the conclusion that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC."

11. From the aforesaid observations made by the Apex Court, it is clear that the repetition of old and over ruled arguments in review petition is not enough to reopen the concluded adjudications and review petition cannot be equated with the original hearing of a case.

12. In the instant case, when this Court has held in the impugned judgment that the substantial questions of law formulated by this Court on 26.09.2013, in the RSA No. 214/2013, is not involved in the said appeal and it would not, in any manner effect the merit and finding arrived at by the Trial Court as well as the First Appellate Court regarding the validity of the impugned sale deed which was cancelled by the judgments delivered by the said Courts, this Court is of considered opinion that the review petitioner has failed to show any mistake or error apparent on the face of record which would have affected the merit and outcome of the RSA No. 214/2013.

13. For the reasons aforesaid, this Court is of considered opinion that the instant review application is not maintainable and same is liable to be dismissed.

14. This application is accordingly dismissed.

15. The parties are to bear their own costs.

JUDGE

Comparing Assistant