

R.C.S. No. 05/2010.
Ramkrushna..Vrs..Secretary

ORDER BELOW EX. 54.

(Passed on 10th March, 2017.)

[01] Defendants filed application for review the order passed dated 06/10/2016 below Exh.53 under order 47 rule 1 of the Code of Civil Procedure.

[02] It is the contention of defendants that the suit property is Government property. Defendants have no concern with suit property i.e. 18 x 21 Sq. Feet. There is no Nazul Record of any properties comes within the village of Sangvi Jomdeo. There is a difference in the document in respect of measurement filed below Exh. 45, 51 and 52. Defendants filed the Namuna-8 of the Malmatta No. 174. The plaintiff averred in the plaint that the suit property i.e. property No. 174, Old No. 166, total area 43 x 21 Sq. Feet is the ancestral property of plaintiff No.1. Out of it, he constructed his house on the area of 25 x 10 Sq.Feet and left open space area of 18 x 21 Sq. Feet. While passing the order below Exh. 53, the Court has not taken into consideration the contention of defendants and documents. Therefore, they prayed that it is necessary to review the order passed below Exh.53.

[03] Plaintiff filed their say overleaf of this application and contended that the said application filed by defendants with intention to prolong the matter. The Court has passed order below Exh. 53 after considering all the facts and documents. It is further contention of plaintiff that the Court can not alter or change its own order after passed. No prejudice will be caused to any of the parties, if the measurement took place. The said application is not

tenable. Hence, they prayed that the application is liable to be rejected.

[04] It is pertinent to note here that the scope of review is very limited. A review may be based on any of the following reason -

- (1) Discovery of new and important matters or evidence, or
- (2) Mistake or error apparent on the face of record, or
- (3) Any other sufficient reason.

If these conditions are satisfied, the Court should exercise the power of review.

[05] The plaintiff filed suit for permanent and mandatory injunction and also removal of encroachment. It is the pleading of plaintiff that he constructed the area of 25 x 10 Sq. Feet and left the open plot area of 18 x 21 Sq. feet. The said suit property is owned and possessed by plaintiffs. The plaintiff no.1 transferred open plot 18 x 21 Sq. Feet total area 378 Sq. Feet in the name of plaintiff No.2 by registered deed dated 05/11/2009. But, defendants constructed the cement road at southern side and western side over the suit property and also made encroachment. The plaintiffs filed evidence or P.W.1 Ramkrushna and also defendants took his cross-examination. Plaintiffs filed documents i.e. Namuna 8 of Malmatta No. 174 at Exh.51 and Namuna 8 of Malmatta No. 166 at Exh.52. On the perusal of Exh.51 and 52, it reveals that the area of Malmatta No. 174 is 25 x 10 Sq. Feet and the area of Malmatta No. 166 is 43 x 21 Sq. Feet. At the time of execution of sale deed, in favour of the plaintiff No.2 and Plaintiff No.1, the plaintiff No.1 annexed Namuna 8 of Malmatta No. 174, which reveals that the plaintiff No.1 Ramkrushna is the owner of area of 25 x 10 Sq. Feet, where he constructed house and area of open plot 18 x 21

Sq. Feet which is sold by plaintiff No.1 to the plaintiff No.2. The said document also issued by secretary of Gram panchayat. But, it is denied by defendants. The defendants contended that the Nazul Survey is not conducted in the village of Sangvi Jomdeo.

[06] It is pertinent to note here that the order passed below Exh.53 after considering the above all facts and documents and after hearing of both sides. The defendants have not filed new document or evidence on record. The suit filed for removal of encroachment. The encroachment can not be ascertain without measurement. In the order passed below Exh.53, it is specifically directed to both the parties to produce documents showing the measurement of suit property. Therefore, there is no mistake or error apparent on the face of record, while passing the order. Defendants failed to give sufficient reason to review the order. In *Ajitkumar Rath .Vrs. State of Orisa (2000)2 LRI 163*, wherein the Hon'ble Court held that -

“the review can not be claimed or asked merely for fresh hearing or argument or the correction of erroneous view taken earlier.”

It is also important to note here that the defendants have opportunity to discard the evidence and report of Court Commissioner by taking cross-examination. Therefore, there is no substance in the application of defendants for review the order passed below Exh.53. Hence, I pass the following order.

Order

The application is hereby rejected.

Sd/-

(B.M. Kale)

Dt.10/03/2017.

Civil Judge (Jr.Dn.), Balapur.

Certificate

I affirm that the contents of this P.D.F. file are same word for word as per original order.

Name of Steno : S.V. Indane.
Court Name : C.J.J.D. & J.M.F.C., Balapur.
Date : 10/03/2017.
Signed by Presiding
Officer on : 10/03/2017.
Uploaded on : 14/03/2017.
