

CNR No. MHSI08-000052-2019

ORDER BELOW EXH. 104

This is the application for review of order passed below Exh.87. As per plaintiff in Exh.87, plaintiff wanted to give explanation to the case of plaintiff regarding the nature of the suit property that, the suit properties are not joint family properties of plaintiff and defendants. They are holding the suit properties commonly, though the plaintiff and defendants are having common surname, they are not close relatives and their ancestor is not common. As per plaintiff even earlier at Exh.50, plaintiff has filed amendment application mentioning that defendant no.2 is not Class I relative of plaintiff. But in that amendment application by oversight the amendment regarding close relative of plaintiff and suit properties being ancestor properties had remained to be mentioned. So only in order to delete the inconsistent matter still appeared in the plaint regarding relationship and nature of the suit properties the application for amendment of plaint at Exh.87 was given. The amendment sought at Exh.87 was not inconsistent with original pleading. But it was suggested for removal of ambiguity remained in the pleadings of the plaintiff. The deletion of certain portion in the pleading was necessary to explain whether the plaintiff and defendants are relatives or their family members were having common ancestor. Hence, as per plaintiff order passed below Exh.87 is erroneous and mistaken, hence, needs to be reviewed.

2. At Exh.110 defendant no.1, 3 to5 filed their say contending that there is no specific reason for review of order

Exh .87. Hence, they prayed for rejection of this application.

3. Perused the application, say, order below Exh.87, original plaint, say filed by plaintiff for Exh.87, after hearing both sides following points arose for my determination.

Sr.No.	Points	Findings
1.	Whether this review application is maintainable ?	No
2.	What order	Application rejected.

REASON

4. From this application, it is clear that plaintiff is praying for reviewing of order passed below Exh.87 contending that the order is apparently wrong and mistaken and without taking into consideration the fact that plaintiff wanted to explain the real situation in the suit, the court rejected the application under Exh.87. Hence, plaintiff prayed for review of this order of Exh.87. Thus, plaintiff wants that the application under Exh.87 should be allowed. After perusal of Exh.87, it is clear that this application was filed by plaintiff for amendment of plaint praying for deletion of certain portion from the plaint and for adding some portion stating that plaintiff and defendants are not relatives and not having common ancestor.

5. After perusal of original plaint, it is clear that original suit was filed by plaintiff stating that plaintiff and

defendants are close relatives and suit properties are their common, ancestral properties. Again in the suit, plaintiff has contended that defendant no.2 forcefully made him to release his share in the suit properties in favour of defendant no.2. But in Exh.87, he also prayed for deleting of that portion and also deleting that the release deed between him and defendant no.2 was void ab initio. Thus, from reading of plaint, it was clear that originally suit was filed for partition of suit properties between plaintiff and defendants contending that plaintiff and defendants are close relatives and the properties are ancestral and common properties, also the release deed was forcefully taken by defendant no.2 . Hence, for declaring that, it was void-ab-initio. After that plaintiff filed application under Order 6 Rule 17 of the C.P.C. at Exh.50 contending that defendant no.2 is not his Class I relative. So he wanted to change that portion of plaint regarding the relationship between him and defendant no.2. Application at Exh.50 was thus allowed.

6. Now, the contentions of the plaintiff in the plaint, after amendment as per Exh.50 was that the plaintiff and defendants were close relative, but defendant no.2 is not his Class I relative and suit properties are ancestral and common properties and defendant no.2 forcefully got release deed in his favour from plaintiff. But after 4 years of this amendment, plaintiff filed application at Exh.87 again for amendment of plaint stating that there is no relationship between plaintiff and defendants and the suit properties are not their ancestral properties. Thus, by this application at Exh.87 plaintiff wanted to state that as per original suit, the suit properties are not

ancestral properties, but only common properties of plaintiff and defendants and that as per original suit, plaintiff and defendants are not relatives, but only having common surname. He further wanted to delete the portion about defendant no.2 forcefully taking release deed in his favour from plaintiff.

7. This application at Exh.87 was rejected. The reason for rejection was that inspite of having ample opportunity and full knowledge about the relationship between plaintiff and defendants that, they are not relatives but only having common surname, plaintiff at the inception, did not file the suit stating the real facts and with due diligence not attempted to amend the pleading at earliest opportunity. Even at the time of Exh.50 plaintiff was having opportunity and knowledge about the relationship and status of properties. But at that time also plaintiff filed the application stating only that defendant no.2 is not his Class I relative, which means that plaintiff wanted to amend plaint stating that defendant no.2 is not his Class I relatives. That clearly shows that plaintiff wanted to say by this amendment at Exh.50 that defendant no.2 is though not his Class I relative, but still he is his relative of any kind. Which means at that time also it was the contention of plaintiff that he and defendants are relatives and not strangers. But suddenly by filing amendment application Exh.87 plaintiff contended that actually plaintiff and defendants are not relatives but only their surname is same and the suit properties are not their ancestral but only common properties and the release deed was not taken forcefully by defendant no.2. Thus, this amendment sought by Exh.87 was totally different from the earlier amendment at

Exh.50 and original suit.

8. As the plaintiff was having the knowledge about his relationship with defendants and status of suit properties as only common properties and not ancestral properties, but still plaintiff at the time of filing the suit and even at the time of amendment of plaint at Exh.50 choose to state that the plaintiff and defendants are relatives and the suit properties were ancestral properties. This very act of plaintiff shows that he did not come before this court with clean hands and true case. Thus, the application at Exh.87 being fraudulent and not bonafide was rejected. Though plaintiff has filed citations of the Hon'ble Supreme Court and High Courts in favor of allowing amendment, but as in all those judgment pre-condition for allowing amendment application was that the proposed amendment should be bonafide and not fraudulent. As it was held that the amendment sought at Exh.87 was not bonafide and was fraudulent, those citations were held to be not supportive to the plaintiff.

9. Section 114 of the C.P.C. provides as under :-

Subject as aforesaid, any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes,

As per this provision, an order can be reviewed.

Order 47 Rule 1 of the C.P.C. provides as under :-

1. Application for review of judgment.

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred, (b) by a decree or order from which no appeal is allowed, or (c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

10. Now, as the plaintiff praying for reviewing this order, no new circumstances are brought before this court, as

plaintiff not showing that the order at Exh.87 was passed mistakenly or without any sufficient reason or nowhere plaintiff has stated that he has discovered new and important evidence which even after the exercise of due diligence was not within knowledge of plaintiff or he could not produce it before. Thus, the application for review is maintainable only if plaintiff discovered new and important matter or evidence which after the exercise of due diligence was not within knowledge.

11. In 2013, ALL SCR 3411, Kamlesh Verma v/s Mayavati and others

Hon'ble Supreme Court held that, section 114 of the Code of Civil Procedure 1908, provides for the power of the court to review its own judgment or order. The section empowers the court to review any judgment pronounced by it, for the purpose of correcting any errors or mistakes that may have crept in, either on account of some accidental slip or omission or on account of some mistake or error of law apparent on the face of the record. The section also allows the court to review its own order if it is satisfied that there is some new and important matter or evidence which was not within the knowledge of the party seeking the review at the time of the original hearing, or that there was some mistake or error which needs to be rectified. However, it is important to note that the power of review under Section 114 is not unlimited. The court cannot review its own judgment or order merely because the parties are dissatisfied with it or because it has been discovered that another view could have been taken on the same facts and evidence. The power of review can only be exercised in cases

where the court finds that there was some error or mistake that needs to be rectified.

12. Defendant has also filed above citations in support of his say alongwith following -

2017 (6) ALL MR 190 Sarswatibai Mahadeorao

Pawade v/s Shri Harishchandra Mahadev Pawade

In this Hon'ble Bombay High Court stated that, there is no occasion for review court to exercise review jurisdiction and take another view of matter, expecially when there was no erro apperent on face of record.

13. Plaintiff has filed following citations -

(2005) AIR (SC) 592 Board Of Control for Cricket ,
India and another v/s Netaji Cricket Club and
another

It was held by Hon'ble Supreme Court that, the mistake on the part of the court which would include, a mistake in the nature of undertaking may also call for a review of order.

14. Thus, the Exh.87 was rejected as the amendment sought in that application was within the knowledge of plaintiff since filing of suit and even after having opportunity at the time or Exh.50 amendment, plaintiff chose to amend the plaint, stating that he and defendants are though not Class I relatives, but still they are close relatives and suit properties were their ancestral properties. But, suddenly, by amendment application at Exh.87, plaintiff wanted to say in suit that, plaintiff and

defendants are not relatives, suit properties were only common properties and not ancestral properties. Also, he wanted to delete the portion about defendant no.1 getting the release deed from him forcefully. Thus, by that amendment, whole story of suit was changing, though the nature of partition suit was same, but this amendment clearly showing that, plaintiff did not come with clean hands before this court and the amendment sought was not bonafide. On the other hand, it was on its face fraudulent. Thus, in this review application, it is not the contention of plaintiff that, he has discovered new facts, which even with due diligence, he could not state earlier, but, he found those circumstances now. Nothing like this on the record, hence, the review application is not maintainable.

15. Thus, the application being devoid of merits needs to be rejected.

ORDER

The application is rejected.

Date : 25/07/2024.

(Smt.N.B.Ghatage)
Civil Judge (J.D.) Deogad.