

Order below Exh. 46 in R.C.S. No.08/17

Keshav Vs. Krishna Vaidya

The defendant no.4 to 8 have filed present application for review of orders of this Court below Exh.18, 32, 34 and 36.

2] The application in short is as under:

The defendants have filed application below Exh.18 to dismiss the suit on the count that it was filed against the minor person by showing him a major person. On that count, the plaintiff filed application Exh.32 for amendment and below Exh.34 for appointment of guardian. The plaintiff had filed application below Exh.36 for direction to the defendants to file the copy of sale-deed. The applications of the plaintiff are allowed and application of defendant is rejected. All orders of the Court are against the provisions of law and inconsistent with legal provisions, hence, they are required to be reviewed on following grounds.

(a) There is no provision to regularize the suit filed against the minor. The amendment has caused prejudice to the defence of the defendants. This fact is not considered by this Court. Moreover, the order is against the judgment of the Hon'ble High Court, is not considered by the Court.

(b) The 7/12 extracts of the suit properties were available to the plaintiffs. Even though it was mentioned that the defendant no.3 is minor, plaintiffs have shown him as major, hence, the amendment was not required to be allowed. This Court has not seen the 7/12 extracts properly.

(c) The plaintiffs had called certified copy of the sale-deed. The plaintiffs want said sale-deed to prove *Kabjepatti* which is public document. The plaintiff had received the said document. Hence, there is no need to pass such order.

(d) The order of this Court is against the provisions of the law.

On all above points, the defendants have claimed review of order of this Court.

3] The plaintiffs have filed their Say at Exh.47. They have contended that, the orders have been passed considering the facts of the case. The document claimed by the plaintiff is required to be brought on record. The original documents need to be come on record. There is no new facts brought on record, hence, there is no need to have review of the order.

4] The learned Advocate Shri. C. P. Kulkarni for the defendants has filed his Written Argument at Exh.48. His contentions in the application and Written Argument are one and the same.

5] Heard learned Advocate Shri. Madane for the plaintiffs. His contentions in the Say and the argument are one and the same.

6] The learned Advocate Shri. Mandane has relied upon the judgment of the Hon'ble Madras High Court in the case of *M/s. J.P.Builders Vs. Ramdas Rao in Review Application No.37 of*

2010 in A.S.No.708/08. It is held in Para-8 that, *“It is well settled that the 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 of C.P.C.”*

7] The ratio is applicable to the present case. All points raised by the defendants are the points which are to be raised in Appeal, but cannot be raised in Review proceeding. Because as per Order 47 of C.P.C., the review is permissible when there is discovery of new and important matter, there is some mistake or error apparent on the face of record or for any sufficient reason. All the elements are absent in the present case.

8] The learned Advocate Shri. Madane has relied upon the judgment of the Hon'ble Andhra Pradesh High Court in case of **Mandakini Naik Vs. G.K.Naik 2005(3)ALD 353.** It is considered in Para-21 that, *“The judgment may be open to review if there is mistake or error apparent on the face of the record. An error which is not as evident and as to be decided by the process of reasoning can hardly be said to be an error apparent on the face of the record”.*

9] I do not find considering the facts of the case and the orders on applications that, there is any error in these orders.

10] Firstly, the order of this Court is challenged on the count that, this Court has erred in passing order of direction of production of document. On this point, the provisions of Order 11

Rule 17 of C.P.C. are very clear. It authorizes the Court for order of production of document by any party, which is in possession or power of said party. So when law clearly empowers the Court to pass any order and order is passed on the basis of such power, at any cost, it cannot be said to be erroneous order. Hence, there is no substance in submissions of learned Advocate Shri. Kulkarni.

11] Another thing is that, this Court ought not to have allowed the amendment to amend the plaint to show defendant no.3 as minor who was previously shown as major. On this point, provisions of Order 6 Rule 17 of the C.P.C. is very clear. It provides that the Court may permit an amendment of pleadings when it is necessary to decide the real controversy between the parties. Considering said legal provisions that order has been passed. Hence, there is no erroneous thing in passing said order.

12] Considering above discussion, it is clear that there is no error in passing orders on previous applications. Hence, present application is liable to be rejected. Therefore, order as under:

ORDER

1. Application is rejected.

Dahiwadi
Date: 07/04/2017

(S.S.Deshmukh)
Jt.C.J.J.D. Dahiwadi