

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3649 OF 2017
(Arising out of SLP(C) No.9864 of 2014)

ASHOK RAM (DEAD) THR.
LRS. & ANR.

APPELLANTS

VERSUS

M. HAMZA & ORS

RESPONDENTS

O R D E R

1. Leave granted.
2. We have heard learned counsel for the contesting parties.
3. This short question which arises for our consideration is about the review jurisdiction of the High Court in setting aside the earlier decision of the High Court in Second Appeal being SAT No. 001 of 2010.
4. A suit was filed by respondent No.1 against the appellants for specific performance of agreement to sale. The trial Judge by his judgment and decree dated 29.01.2009 dismissed the same.
5. Being aggrieved by the judgment and decree of the trial court, the respondent No.1 preferred Title Appeal No. 5 of 2009, which also came to be dismissed vide judgment dated 19.10.2009.

6. Challenging the order of the District Judge, the respondent No.1, preferred a second appeal being SAT No. 001 of 2010 before High Court of Calcutta, Circuit Bench at Port Blair. The High Court, by its judgment and order dated 10.12.2010, dismissed the second appeal. The respondent being aggrieved by the said judgment, filed a review petition under Order 47, Rule I of the Code of Civil Procedure, challenging the findings of the High Court. The High Court allowed the review petition directing de novo hearing of the Second Appeal by observing that the question of law so formulated was not properly dealt with and answered in the ingredient of Order 47 Rule 1 that error was apparent and must be relooked into.

7. In our considered view, the aforesaid approach of the High Court dealing with the review proceedings clearly shows that it has overstepped its jurisdiction under Order 47, Rule 1 CPC by merely styling the reasoning adopted by the earlier Bench of High Court as suffering from a patent error. It would not become a patent error or error apparent in view of the settled legal position by catena of judgments of this Court.

8. In substance, the Review Bench has re-appreciated the entire evidence, sat almost as court of appeal and has reversed the findings reached by the earlier Bench. Even if the earlier Bench's

findings were found to be erroneous, it would be no ground for reviewing the same, as that would be the function of an appellate court.

9. In our opinion, the High Court proceeded in the matter taking it as an appeal and it could not have re-appreciated the entire evidence with a view to finding out the alleged apparent error for justifying the invocation of review powers. Therefore the High Court has failed to appreciate its jurisdiction in a review application and exceeded its jurisdiction. Therefore this appeal is required to be allowed. The impugned decision of the High Court dated 27.09.2013 is set aside.

10. The appeal is accordingly allowed.

.....J.
(PINAKI CHANDRA GHOSE)

.....J.
(ROHINTON FALI NARIMAN)

NEW DELHI,
MARCH 03, 2017

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.9864/2014

(Arising out of impugned final judgment and order dated 27/09/2013 in SAT No. 001/2010 27/09/2013 in RVW No. 022/2010 passed by the High Court of Calcutta)

ASHOK RAM (DEAD) THR. LRS. & ANR. Petitioner(s)

VERSUS

M. HAMZA & ORS Respondent(s)

(With application(s) for permission to urge additional facts and additional documents and interim relief and office report)

Date : 03/03/2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s) Mr. R. Chandrachud, AOR
Mr. Nitin Thukral, Adv.

For Respondent(s) Mr. Soumya Chakraborty, Sr. Adv.
R. Boshe, Adv.
Mr. Danish Zubair Khan, AOR

Mr. Bhupesh Narula, Adv.
Mr. K. V. Jagdishvaran, Adv.
Ms. G. Indira, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the Signed Order.

Pending application(s), if any, stands disposed of.

(RASHI GUPTA)
SR.P.A.

(SUMAN JAIN)
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]