

Sunil Vasudeva vs Sunder Gupta . on 2 July, 2019

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(2019) 201 ALLINDCAS 159, (2019) 4 CAL HN 182, (2019) 5 ALL WC 4143,
(2019) 8 SCALE 488**

Author: Ajay Rastogi

Bench: Ajay Rastogi, A.M. Khanwilkar

REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(s).5140 OF 2019
(Arising out of SLP(C) No(s). 5449 OF 2015)

SUNIL VASUDEVA & ORS.Appellant(s)

VERSUS

SUNDAR GUPTA & ORS.Respondent(s)

JUDGMENT

Rastogi, J.

1. Leave granted.
2. The present appeal is being filed against the impugned judgment dated 24th September, 2014 passed by the High Court of Calcutta in RVW No. 272 of 2012 recalling the Order dated 19 th October, 2012 and while setting aside the order dated 31 st March, 2006 restoring the Writ Petition No. 18500(W) of 1985 to be heard on its own merits as expeditiously as possible which is a subject matter of challenge in appeal before us.
3. The facts that emerge from the multitude and collateral and exhaustive pleadings of the parties in nutshell are that respondent nos. 1, 2 and 3 (writ petitioners) are the grandsons of Kirodimull Lohariwala and sons of Premchand Gupta both since deceased, who constituted a H.U.F. which owned property No. 43, Prithviraj Road, New Delhi(subject property) standing in their joint names having other properties at Calcutta.

4. The present appellants are alleged to be the legal heirs of late V. N. Vasudeva who happens to be the income tax practitioner and lawyer of late Kirodimull Lohariwala had purchased the subject property in an open auction conducted by the Income Tax Department on 18 th August, 1964 for a consideration of Rs. 2,60,000/□and the sale certificate with respect to the suit property was issued on 1 st April, 1965.

5. In August, 1957, late Kirodimull Lohariwala instituted a Suit No. 1451 of 1957 before the High Court of Calcutta against Premchand Gupta claiming the said property including other properties as his self□acquired properties and in the interregnum period, the official receiver was appointed over the subject property by the High Court of Calcutta, who took possession of the property on 1st May, 1958. The said property (43, Prithviraj Road, New Delhi) was purported to be sold under Certificate proceedings initiated by Income Tax Department for recovery of alleged income tax dues of Sambhuram Kirodimull HUF to late V.N. Vasudeva for a sum of Rs. 2,60,000/□on 18 th August, 1964.

6. At this stage, objection was raised by late Kirodimull Lohariwala against such purported sale to V.N. Vasudeva for the reason that no leave was obtained from the High Court of Calcutta which was although overruled by the Chief Commissioner, Delhi on 26th February, 1965. At the same time, application was filed by the Income Tax Department in the said Suit No. 1451 of 1957 praying for (a) condonation of the omission to obtain leave of Court before putting the Delhi property for sale and (b) leave be given to it to complete the said sale of the Delhi property in favour of V.N. Vasudeva and to give further effect thereto. A certification of confirmation of sale was issued by the District Collection Officer, Delhi purporting to confirm the said purported sale dated 18th August, 1964 in favour of late V.N. Vasudeva. At this stage, order was passed by the High Court of Calcutta on the application of Union of India dated 8 th September, 1965 granting liberty to the Income Tax Department to put the Delhi property for sale by public auction or private treaty to the best purchaser or purchasers that can be got for the same. What will be the effect of the later order passed by the High Court of Calcutta dated 8 th September, 1965 in reference to the order of the District Collection Officer, Delhi for confirmation of the auction sale will not be advisable for this Court to examine.

7. A detailed correspondence took place between the Income Tax Department and late Premchand Gupta (father of respondent nos. 1□3) which is not required to be dilated in the instant proceedings.

8. At this stage, respondent nos. 1□3 filed Title Suit No. 471 of 1985(Sundar Gupta & Ors. Vs. Sita Vasudeva & Ors.) before the District Judge at Delhi on 19 th May, 1985 for seeking declaration to continue to be the owners of the suit property and for injunction restraining the auction purchaser V.N. Vasudeva, predecessor of the appellants from changing the nature of the property. Indisputedly, Income tax authorities were not impleaded as parties to the suit.

9. Respondent nos. 1□3 also filed Writ Petition bearing C.O. No. 18500(W) of 1985 against the Union of India and the present appellants in the High Court of Calcutta regarding the purported sale of the Delhi property to late V.N. Vasudeva under auction dated 18th August, 1964 declaring that the purported sale dated 18th August, 1964 and issuance of the certificate of confirmation of sale dated

1st April, 1965 in respect of the Delhi property be declared as null and void and the subject property be remained under attachment by income tax authorities.

10. Taking assistance of the order of the High Court of Calcutta dated 8th September, 1965 passed on an application filed by Union of India of which a reference has been made, affidavits/counter affidavits were filed by the respective parties and the writ petition(C.O. No. 18500(W) of 1985) was heard and judgment was reserved by High Court of Calcutta in March/April, 1986 and after almost four and a half years, the Writ Petition was dismissed by the Single Judge of the High Court on 26 th October, 1990 dealing with the submissions and arriving to the conclusion that since the writ petitioners have resorted to alternative remedy of filing suit in the court of District Judge, Delhi which although was pending on the date when the judgment was reserved(Title Suit No. 471 of 1985) keeping all points raised before the High Court of which a reference has been left open to be agitated by the parties in the pending Title Suit No. 471/1985 but the fact is that Title Suit No. 471/1985 which was pending on the date when the judgment was reserved by the High Court in March/April, 1986 came to be dismissed under Order 9 Rule 2 Code of Civil Procedure due to non-serving upon the main defendants vide order dated 3rd October, 1986 and either of the party has not brought this fact to the notice of the Court about the later developments of which reference has been made. Immediately thereafter, respondent nos. 1-3 filed an application for recalling/setting aside the order dated 26 th October, 1990 and for deciding the writ petition on merits.

11. After hearing the parties, Single Judge of the High Court of Calcutta under its order dated 20 th November, 1998 allowed the application filed by respondent nos. 1-3 and recalled the Order dated 26th October, 1990 by restraining Vasudevas from dealing with the subject property with the direction to hear the matter on merits.

12. The present appellants preferred appeal against the Order dated 20th November, 1998. The Division Bench of the High Court of Calcutta in M.A.T. No. 87 of 1999 disposed of the appeal under its Order dated 17th August, 2001 without interfering with the order of recalling on review application dated 20 th November, 1998 but as it reflects from the record, the present appellants after taking note of the Order dated 17 th August, 2001 considered appropriate to prefer SLP(C) No. 22491 of 2001 before this Court which came to be dismissed at the motion stage on 10 th January, 2002.

13. The present appellants thereafter filed application being C.A. No. 3557 of 2005 in the disposed of Writ Petition No. 18500(W) of 1985 inter alia praying that the respondents be restrained from proceeding with any advertisement for sale of suit property as no such liberty has been given by the Court. Single Judge of the High Court, after hearing the parties, held that there was nothing pending before the Court and thus the aforesaid miscellaneous application was held to be not maintainable under its Order dated 31st March, 2006.

14. The Order dated 31st March, 2006 passed by the Single Judge of the High Court came to be assailed by the respondents in appeal that came to be dismissed vide Order dated 19 th October 2012 with liberty to the respondents to file a fresh suit on the self-same cause of action in Delhi, if so advised. The respondents preferred Review Application being RVW No. 272/2012 against the

impugned judgment dated 19 th October, 2012 and also the Order dated 31 st March, 2006. By the impugned order dated 24th September, 2014, the Order dated 19 th October, 2012 was reviewed and in consequence, the order dated 31st March, 2006 was set aside and directed the Writ Petition No. 18500(W) of 1985 to be heard on its own merits which is a subject matter of challenge at the instance of the appellants in the instant appeal.

15. Mr. Mukul Rohatgi, learned senior counsel for the appellants with his usual vehemence submits that the present review petition filed by the respondents was not maintainable as none of the grounds which have been taken note of meets the principles of review jurisdiction of the Court as envisaged under Order 47 Rule 1 Code of Civil Procedure which entails the basic principles for entertaining the review petition and this Court in Kamlesh Verma Vs. Mayawati and Others¹ has laid down the principles where review can be said to be maintainable.

16. Learned counsel submits that in the instant case, respondents have failed to canvass the principles for maintainability of a review application and the Order passed by the High Court under its review jurisdiction impugned dated 24 th September, 2014 primarily does not satisfy the basic principles of law regarding maintainability of the review application and even in the impugned judgment, neither the High Court has been able to decipher new and important matter from the evidence which, after the exercise of due diligence, was not in the knowledge of the review petitioner nor pointed out any mistake or error apparent on the face of record or suggested any other sufficient reason calling for review. In the given circumstances, the very order impugned dated 24th September, 2014 passed by the High 1 2013(8) SCC 320 Court of Calcutta is not sustainable in law and deserves interference by this Court.

17. Learned counsel further submits that the respondent nos. 1□3 in fact are repeatedly abusing the legal process and launching litigation in regard to the subject property for more than 50 years and their real purpose of filing Writ Petition No. 18500(W) of 1985 was to withhold the Income Tax Department from attaching and selling other properties in Calcutta. It is only by alleging that the suit property in Delhi was legally headed by the Department and the suit property be put into sale afresh. However, the fact is that the auction sale of suit property was accepted by the owner of the said property Kirodimull Lohariwala which is evident from a reply which he filed to an application in the suit for eviction against the predecessor in interest of the appellants and was taken note by the Single Judge in its Order dated 26th October, 1990.

18. Learned counsel further submits that detailed judgment of the Single Judge of the High Court dated 26th October, 1990 has dealt with the several grounds raised on merits and merely because the Judge has finally granted liberty to the respondents in raising all questions in the first instance in the pending suit in Delhi(Suit No. 471 of 1985) which was indeed pending on the date when the judgment was reserved and was dismissed much before the pronouncement of the judgment dated 26 th October 1990 but the Single Judge of the High Court has dealt with all the issues and repelled the same in its judgment dated 26 th October, 1990.

19. In the given circumstances, learned counsel submits that recalling of the order dated 26th October, 1990 under review jurisdiction of the High Court and relegating the parties to square one

would be nothing but abuse of the legal process and needs to be curbed and that is the reason for which the appellants have approached this Court by filing an appeal despite the public auction held by the Income Tax Department in the year 1964 in favour of the predecessor in interest, V.A. Vasudeva and after the purported sale stands confirmed overruling the objections of the original owner of the property dated 26 th February 1965 and issuance of certificate of confirmation of sale dated 1 st April, 1965, still they are unable to get fruits of the subject property in question and relegating them to the year 1985 that too after more than 34 years of the property put to auction would not be in the interest of justice and that needs to be interfered by this Court.

20. Per contra, learned senior counsel for the respondents, Mr. Jaideep Gupta and Mr. Siddharth Luthra and Mr. Ashok Gupta, respondent in person, on the other hand, while supporting the judgment impugned dated 24 th September, 2014 submits that auction of the subject property in question was never confirmed and submits that in February 1957 Kirodimull Lohariwala (grandfather of the respondents) appointed V.N. Vasudeva, an income tax practitioner(father of appellant nos. 1 &

2) as his income tax lawyer and constituted attorney. V.N. Vasudeva took full advantage of his fiduciary relation and became tenant of the subject property on a paltry sum of Rs. 300/- per month. On May 1, 1958, Official Receiver was appointed in Suit No. 1451 of 1957 by High Court of Calcutta inter alia includes Delhi property. Since V.N. Vasudeva did not pay rent of the Delhi property and set up a fictitious agreement between himself & Kirodimull Lohariwala for adjustment of rents against his professional fees, this Court castigated V.N. Vasudeva in V.N. Vasudeva Vs. Kirodimal² arising out of the eviction proceeding holding that V.N. Vasudeva avoided payment of the monthly rent of Rs. 300/- to the Income Tax Officer(as Delhi property was under attachment of Income Tax Department).

21. Learned counsel further submits that Civil Court does not have any jurisdiction to deal with such matters in view of Section 293 of the Income Tax Act, 1961 and the only remedy available to the respondents is to file a writ petition under Article 226 of Constitution of India.

22. Learned counsel further submits that the Writ Petition No. 18500(W) of 1985 filed at the instance of the respondents indeed came to be decided on 26th October, 1990 but has not taken note of the effect of Section 293 of the Income Tax Act, 1961 and the consequential effect of the order dated 8 th September, 1965 passed by the High Court of Calcutta of which a reference has been made and also the fact that judgment remain pending for almost four and half years and prior thereto, the Title Suit No. 471 of 1985 was dismissed and in the given circumstances, the 2 AIR 1965 SC 440 conclusion arrived at by the Single Judge that all contentions are available to be raised in the pending suit (in Delhi) in sequel thereof was a mere observation and could not be said to be a finding recorded on the subject matter and this what has been projected by the High Court in relegating the parties to appear before the Single Judge of the High Court and addressed in Writ Petition No. 18500(W) of 1985 on merits and that cannot be termed to be beyond its review jurisdiction as envisaged under the law.

23. Learned counsel submits that if the Writ Petition No. 18500(W) of 1985 filed at the instance of the respondents is not heard on merits, they will remain remediless as their contentions have not yet been decided by any Court of competent jurisdiction and further submits that no prejudice either way has been caused to the parties as they are being relegated back to address on merits in the Writ Petition No. 18500(W) of 1985, having all contentions to be raised in the proceedings.

24. We have heard learned counsel for the parties and with their assistance perused the material available on record.

25. From the material on record, it manifests that the subject property (43, Prithviraj Road, New Delhi) was purported to be sold in the certificate proceedings initiated by Income Tax Department for recovery of income tax dues of Sambhuram Kirodimull HUF to the auction purchaser late V.N. Vasudeva for a sum of Rs. 2,60,000/- on August 18, 1964. Kirodimull objected against such purported sale to V.N. Vasudeva because no leave was obtained from the High Court of Calcutta which was overruled by the Chief Commissioner, Delhi and confirmed the purported sale in favour of V.N. Vasudeva vide Order dated 26 th February, 1965. At this stage, application was filed by the Income Tax Department in Suit No. 1451 of 1957 praying for (a) condonation of the omission to obtain leave of Court before putting the Delhi property for sale and (b) leave be given to it to complete the said sale of the Delhi property in favour of V.N. Vasudeva and to give further effect thereto. On an application filed by Income Tax Department, the Single Judge of the High Court of Calcutta in its Order dated 8 th September, 1965 taking note of the rival contention of the parties observed as follows:-“A.N. Ray (In Chambers) Kirodimull Bhiwaniwala, also known as Kirodimull Lohariwala resident at Sadar Bazar, Raigarh in the State of Madhya Pradesh, outside the jurisdiction of this court.

Vs.

1. Premchand Gupta residing at 181 A, Chittaranjan Avenue, Calcutta within the said jurisdiction.
2. Pawan Gupta
3. Sunder Gupta the last two being minors under the age of 18 years residing at 181 A, Chittaranjan Avenue, Calcutta with the said jurisdiction.
4. Smt. Asrafi Devi alias Sm. Surfi Devi residing at Sadar Bazar, Raigarh, in the State of Madhya Pradesh outside the said jurisdiction.

Upon reading on the part of the Union of India through its Income Tax Officer, Raigarh Civils, Raigarh (hereinafter referred to as the said applicant union), a Mastered Summons bearing date the third day of March last and an affidavit of Sanat Kumar Mukherjee of the due service thereof affirmed on the fifth day of April last and a petition of the said applicant and an affidavit of Ramdas Rambhorose Misra in verification thereof affirmed on the fifteenth day of March last and the exhibits annexed to the said petition and marked respectively A,B,C and D and an affidavit of Ramdas Rambhorose Misra of Raigarh affirmed on the Seventeenth day of June last all filled this

day and upon reading on the part the of the defendants an affidavit of Premchand Gupta affirmed on the fifth day of May last and filed this day and upon hearing Mr. D. Gupta advocate for the said applicant Union and Mr. D.C. Basu advocate for the defendants (the plaintiffs nor appearing either in person or by advocate, or attorney).

It is ordered that the said applicant Union be at liberty to put up the Delhi property being the joint moveable and immoveable properties including Premises No.43, Prithviraj Road, New Delhi, for sale either by public auction or by private treaty to the best purchaser or purchasers that can be got for the same. Witness, Sri Himanshu Kumar Bose, Chief Justice at Calcutta aforesaid the eighth day of September, one thousand nine hundred and sixty five.

S.K. Mandal – Attorney Sutt & Sen – Attorneys S.B. Banerjee 20.1.1966 For Registrar

26. That apart, Section 293 of the Income Tax Act, 1961 put a complete bar of filing suit in any civil court against the revenue/income tax authority and the mandate of law remain unnoticed when the order came to be passed by the Single Judge of the High Court in Writ Petition No. 18500(W) of 1985 decided on 26th October, 1990 while relegating the parties to address in the alleged pending Civil Suit No. 471 of 1985 before the District Judge at Delhi although it was dismissed much prior to the pronouncement of the Judgment dated 26 th October, 1990. Even in the LPA, the Division Bench of the High Court granted liberty to the respondents to file a fresh civil suit in respect of the subject property in Delhi and either party has not brought to the notice of the Court the mandate of law as envisaged under Section 293 of the Income Tax Act, 1961 that the civil suit against the Income tax Department is not maintainable under the law, which appears to be mistakenly omitted by the Court in arriving at the rival claims of the parties.

27. It was taken note of by the High Court in its review jurisdiction and arrived to the conclusion that there appears to be an error apparent on the face of record and consequently allowed the application for review, recalled the Order dated 19 th October, 2012 and set aside the Judgment and Order dated 31 st March, 2006 passed in miscellaneous application and for restoration of Writ Petition No. 18500(W) of 1985 to be heard on its own merits under the impugned judgment dated 24 th September, 2014.

28. The basic principles in which the review application could be entertained have been eloquently examined by this Court in Kamlesh Verma (supra) wherein this Court held as under: □“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in Chhajju Ram v. Neki [(1921-22) 49 IA 144 and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius AIR 1954 SC 526 to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. (2013) 8 SCC 337.

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.”

29. Taking note of the exposition of the above principles let us consider the facts on record and it reveals that the effect of Section 293 of the Income Tax Act has been mistakenly omitted under the judgment in review and that apart, the consequential effect of the order of the High Court on an application filed by the Union of India in Civil Suit No. 1451 of 1957 dated 8 th September, 1965 was open to be examined in the writ proceedings and it was the defence of the Income Tax Department in the reply to the review application and also before this Court in their counter affidavit that in the auction sale which was held in the month of August, 1964, the permission from the Court was not obtained and after the order came to be passed on their application by the Single Judge of the High Court in Suit No. 1451 of 1957 dated 8th

September, 1965, it will certainly affect the auction sale held by the Income Tax Department in reference to the subject property in question and it was their stand throughout in the proceedings.

30. We find that the Single Judge of the High Court of Calcutta heard and reserved the judgment in Writ Petition No. 18500(W) of 1985 in March/April 1986 and after nearly four and half years, the judgment pronounced on 26th October, 1990 relegating the parties to raise all the contentions to their defence in the pending civil suit before the District Judge, Delhi itself indicates that the Single Judge was not inclined to express its opinion on merits obviously for the reason that if the finding was recorded, it would have prejudiced the rights of the parties to the litigation to be examined in the alleged pending civil suit in the District Court, Delhi which although was dismissed on 3 rd October, 1986 much before the pronouncement of the judgment dated 26 th October, 1990 by the Single Judge of the High Court.

31. In the given facts and circumstances, we are not inclined to dilate the issues on merits raised in the Writ Petition No. 18500(w) of 1985 filed at the instance of the respondents before the High Court of Calcutta, but if the civil suit was not maintainable as alleged in view of Section 293 of the Income Tax Act and this was the purported defence of the respondents and of the Income Tax Department and consequential effect to the Order dated 8th September, 1965 of which a reference has been made by us, no party could be left remediless and whatever the grievance the party has raised before the Court of law, has to be examined on its own merits. In our considered view, there appears no error being committed by the High Court in passing the impugned judgment dated 24th September, 2014 in exercise of its review jurisdiction and that needs no interference by this Court.

32. We make it clear that what has been observed by us is only for the purpose of disposal of the present appeal and the Writ Petition No. 18500(w) of 1985 be decided by the High Court of Calcutta on its own merits, after hearing the parties, in accordance with law. Since the dispute is pending for sufficiently long time, we expect that the High Court will give priority to the matter and decide the writ petition expeditiously as possible.

33. The appeal is having no merit and is accordingly dismissed with the observations supra. No costs.

34. Pending application(s), if any, stand disposed of.

.....J. (A.M. KHANWILKAR)J. (AJAY RASTOGI) NEW DELHI
July 02, 2019