SUPREME COURT OF INDIA

C.Radhakrishna

Vs.

Narayana Raju

C.A.No.8108-8109 of 2001

(H.K. Sema and Markandey Katju,JJ.)

13.02.2008

ORDER

1. These appeals are preferred by the plaintiff against the judgment and order dated 8.3.2001 passed by the High Court of Karnataka in R.F.A.No.73 of 1993 and C.P. No. 683 of 1999. The facts of this case illustrate a disquieting feature as to how the power under Order LXVII Rule 1 is being misused. The plaintiffs filed a suit in 1981 for declaration of possession. The suit was decreed by the trial court on 25.9.1992. Aggrieved thereby the defendants filed appeal before the High Court which was dismissed on merits after recording a finding by the same Judge on 7.4.1999. Plaintiffs' Execution Petition was allowed by the Executing Court and warrant of delivery of possession was issued. After the warrant of delivery of possession was issued it appears that the defendants filed a review application under Order LXVII Rule 1 sometime in August, 1999 and by the impugned order the High Court has allowed, not only the review application but allowed the appeal which was already dismissed by the Court on 7.4.1999. Order LXVII Rule 1 entitles a party 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, desires to obtain a review of the decree passed or order made against him, to apply for a review of judgment to the Court which passed the decree or made the order. Power of review, therefore, is limited and confined subject to the aforesaid conditions. In the present case the learned Judge which dismissed the appeal of the defendants on merits on 7.4.1999 allowed the review application by appreciating the entire evidence on record as if the Judge was sitting as an appellate court, which is not permissible under the law. While disposing of the appeal the learned Judge also recorded that the land in question was throughout in the possession of the plaintiffs. However, in review application the same finding has been reversed which is not permissible in the review application. Suffice it to say that in the regular appeal the learned Judge has clearly recorded the admission of the defendants that the land alloted to the defendants was in Survey No. 10/4. Having recorded the finding at the admission of the defendants, sitting in a review, the learned Judge has also alloted the Survey No. 10/17, the same land which was alloted and was in the ownership of the plaintiffs. The learned Judge, in our view, committed

a grave miscarriage of justice. In the result, the appeals are allowed. The judgment and order of the High Court under challenge is set aside. There will be no order as to costs.