

REV.APLC(MD)No.110 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 17.09.2025

PRONOUNCED ON:26.09.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

REV.APLC(MD)No.110 of 2025

in

S.A.(MD)No.239 of 2017

and

C.M.P.(MD)No.9729 of 2025

1.Selvarani

2.Mahalakshmi

: Petitioners/Respondents 1 and 2

Vs.

1.Muthulakshmi

: 1st Respondent/Appellant

2.T.Kumarasamy

: 2nd Respondent / 3rd Respondent

PRAYER:- Review Application filed under Section 114 of the Code of Civil Procedure, as against the judgment and decree dated 13.09.2024 in S.A.(MD)No.239 of 2017 by this Court.

For Petitioners : Mr.V.R.Shanmuganathan



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ORDER

The Review Application is directed against the judgment and decree made in S.A.(MD)No.239 of 2017, dated 13.09.2024, on the file of this Court.

2. The respondents 1 and 2 filed the above suit against the review petitioners for partition and allotment of 2/3 shares in the suit properties alleging that the suit properties came to the share of their father Thangavel gounder in a partition entered into between the said Thangavel gounder and his brothers on 25.06.1968 and that their father had died intestate. The first defendant, brother of the plaintiffs had remained exparte. The second respondent has taken a stand that the plaintiffs and their mother had executed a release deed dated 06.05.1994 relinquishing their rights in the joint family in favour of the first defendant, who in turn sold the properties to the second defendant and that since the sales, the second defendant as owner has been in possession and enjoyment of the suit properties. After full trial, the trial Court, vide judgment and decree dated 14.12.2011 dismissed the suit.



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Challenging the dismissal of the suit, the plaintiffs filed an appeal in A.S.No.13 of 2012 and the learned Subordinate Judge, vide judgment and decree dated 14.03.2017, allowed the appeal and thereby setting aside the judgment and decree passed by the trial Court and granted a preliminary decree declaring that the plaintiffs are entitled to get 1/3 shares each in the suit properties. Aggrieved by the preliminary decree, the second defendant preferred a Second Appeal in S.A.(MD)No.239 of 2017 and this Court upon perusing the records and on hearing the arguments of both sides, passed the impugned judgment daed 13.09.2024, allowing the Second Appeal and thereby setting aside the judgment and decree, passed by the first appellate Court and restored the trial Court judgment dismissing the suit for partition. Challenging the judgment and decree made in the Second Appeal in S.A.(MD)NO.239 of 2017, the plaintiffs invoking Section 114 of the Code of Civil Procedure filed the present review application.

3. The learned Counsel for the review petitioners would submit that this Court has held that the release deed dated 06.05.1994 is not denied by the plaintiffs and that there is no plea of fraud or misrepresentation and that in the absence of any specific denial and in



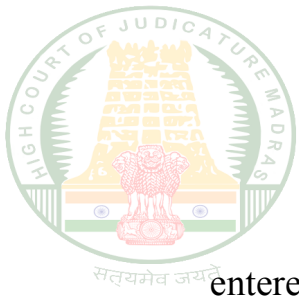
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the absence of any evidence for forgery and fabrication, the other side was under no obligation to examine the attested witnesses to prove the documents, but the plaintiffs in paragraph Nos.7 and 8 of their plaint, clearly averred that under the guise of getting signatures in the settlement deed, a release deed came to be fabricated.

4. The learned Counsel would further contend that the plaintiffs are admittedly illiterates and a combined reading of the evidence of P.W. 1, P.W.2 and P.W.3 would go to show that the plaintiffs signed some documents thinking themselves as witnesses and without knowing that it is a release deed and that there was no understanding on that day to release the shares and Ex.B.1 was obtained by misrepresentation and that the first defendant is the beneficiary under the release deed and as such, the second defendant has independent right to claim only through the first defendant and that therefore, if the release deed is proved, the second defendant's rights gets fructified and as such, the release deed must be proved by the first defendant.

5. The learned Counsel would further contend that the first defendant who claimed that the plaintiffs released their shares, has not



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entered into witness box and the second defendant who is the subsequent purchaser alone had entered into box and only a xerox copy of the release deed was exhibited which has no evidentiary value and inadmissible in evidence. The learned Counsel would further contend that the release deed do not contain any schedule of property as mandatorily required under Section 21 r/w 51 of the Indian Registration Act and that since the findings of the trial Court in paragraph Nos.9 and 10 of the judgment are wrong, but the findings of the first appellate Court in paragraph Nos.10, 11 and 13 are sustainable, the judgment of this Court in Second Appeal in S.A.(MD)No.239 of 2017 needs to be reviewed.

6. A combined reading of Section 114 and Order 47 of the Code of Civil Procedure makes it clear that a Review Petition would be maintainable on (1) discovery of new and important matters or evidence which after exercise of due diligence was not within the knowledge of the applicant or could not be produced by him, when the decree was passed or the order made; (2) on account of some mistake or error apparent on the face of the record; or (3) for any other sufficient reason.



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7. It is settled law that in exercise of review jurisdiction, the Court cannot re-appreciate the evidence to arrive at a different conclusion even if two views are possible in a matter. The Hon'ble Supreme Court in ***Kerala State Electricity Board Vs Hitech Electrothermics & Hydropower Ltd.and others*** (Review Petition (civil) 238 of 2003 dated 10/08/2005), has specifically observed as follows:

“10 In a review petition it is not open to this Court to re-appreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the Court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise.”



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8. In *Lily Thomas, Etc. vs Union Of India and Others* reported in (2000)6 SC 224, the Hon'ble Apex Court has held that the power of review can be exercised for correction of a mistake and not to substitute a view and such powers can be exercised within the limits of the statute dealing with the exercise of power. It is beyond any doubt or dispute that the review Court does not sit in appeal over its own order. It is settled law that a rehearing of the matter is impermissible in law. The word “review” would mean the act of looking offer something again with a view to correction or improvement. No doubt, the review is the creation of a statute and not an inherent power. It is also not an appeal in disguise. A judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record under Order 47 Rule 1 C.P.C. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power to review under Order 47 Rule 1 C.P.C, and it is not permissible for an erroneous decision to be reheard and corrected, but a review petition must be remembered has a limited purpose and cannot be allowed to be an 'appeal in disguise'.



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9. Very recently the Hon'ble Supreme Court in ***Malleeswari Vs. K.Suguna and another in SLP (C) No.12787 of 2025***, reported in ***MANU/SC/1240/2025***, dated 08.09.2025 has dealt with the review jurisdiction and it is necessary to refer the following passages:

“15. It is axiomatic that the right of appeal cannot be assumed unless expressly conferred by the statute or the rules having the force of a statute. The review jurisdiction cannot be assumed unless it is conferred by law on the authority or the Court. Section 114 and Order 47, Rule 1 of CPC deal with the power of review of the courts. The power of review is different from appellate power and is subject to the following limitations to maintain the finality of judicial decisions:

15.1 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 CPC.

15.2 Review is not to be confused with appellate powers, which may enable an appellate court to correct all manner of errors committed by the subordinate court.

15.3 In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered, has a limited purpose and cannot be allowed to be an appeal in disguise.

15.4 The power of review can be exercised for the correction of a mistake, but not to substitute a view. Such powers can be



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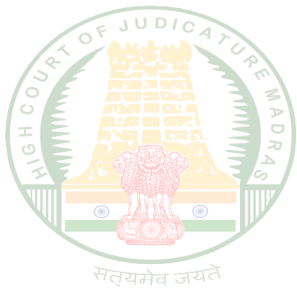
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exercised within the limits specified in the statute governing the exercise of power. 15.5 The review court does not sit in appeal over its own order. A rehearing of the matter is impermissible. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered.⁶ Hence, it is invoked only to prevent a miscarriage of justice or to correct grave and palpable errors.

16. To wit, through a review application, an apparent error of fact or law is intimated to the court, but no extra reasoning is undertaken to explain the said error. The intimation of error at the first blush enables the court to correct apparent errors instead of the higher court correcting such errors. At both the above stages, detailed reasoning is not warranted.

17. Having noticed the distinction between the power of review and appellate power, we restate the power and scope of review jurisdiction. Review grounds are summed up as follows:

17.1 The ground of discovery of new and important matter or evidence is a ground available if it is demonstrated that, despite the exercise of due diligence, this evidence was not



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within their knowledge or could not be produced by the party at the time, the original decree or order was passed.

17.2 Mistake or error apparent on the face of the record may be invoked if there is something more than a mere error, and it must be the one which is manifest on the face of the record.

8 Such an error is a patent error and not a mere wrong decision. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.

17.3 Lastly, the phrase 'for any other sufficient reason' means a reason that is sufficient on grounds at least analogous to those specified in the other two categories."

10. Notably, the impugned judgment refers to paragraph Nos. 7 and 8 of the plaint, as well as the testimony of P.W.1 (second plaintiff), P.W.2, and P.W.3 (attestors of the release deed). Based on this, the Court concluded that the plaintiffs and their witnesses failed to specifically deny the execution of the release deed. Furthermore, despite allegations of fraud and misrepresentation, there are no corresponding pleadings in the plaint and no evidence to support these claims. Therefore, it is evident that there is no apparent error on the face of the record.



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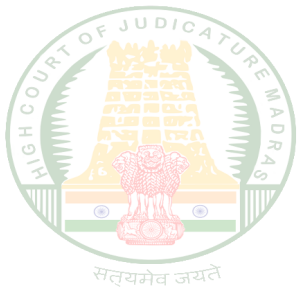
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11. At this juncture, it is necessary to refer the Substantial Questions of Law which came to be formulated in the Second Appeal:

“A. When the 2nd plaintiff who was examined as P.W.1, had admitted her signature in the release deed dated 06.05.1994, whether the approach of the appellate Court in holding that the release deed has not been proved by examining the attestors to the said document is correct in law?

B. When the plaintiffs have not raised any plea or prayer as to the invalidity of release deed dated 06.05.1994, on the basis of improper registration, whether the approach of the appellate Court in holding that the release deed is invalid on the basis of Sections 21 and 51 of the Registration Act, 1908 is sustainable in law?

C. Whether the finding of the appellate Court that the release deed dated 06.05.1994 marked as exhibit X.3, has not been registered properly as contemplated under Sections 21 and 51 of Registration Act, 1908 and as such cannot be deemed as a valid instrument is correct in law?”



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12. In the impugned judgment, this Court answered the substantial questions of law and concluded that the plaintiffs failed to prove that the release deed was obtained through misrepresentation and fraud. Having executed the release deed and relinquished their rights, the plaintiffs lack locus standi to claim shares in the suit properties. Accordingly, the Second Appeal was allowed, setting aside the first appellate Court's judgment and decree. Notably, the review petitioners are re-agitating the same points that were already raised and decided, in the Second Appeal.

13. The Hon'ble Supreme Court in ***M/S Jain Studios Limited Through its President vs Shin Satellite Public Co. Ltd*** in Review Petition (Civil) No.5970 of 2006, dated 11.07.2006, has observed as follows:

“11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the



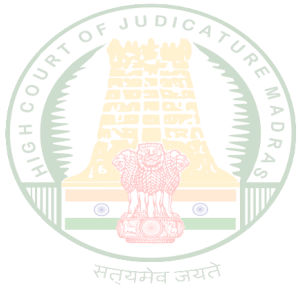
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power of review cannot be confused with appellate power which enables a superior Court to correct all errors committed by a subordinate Court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.”

14. It is pertinent to note that a court's review power under Order 47 Rule 1 of the CPC is limited to specific grounds and cannot be exercised as an inherent or appellate power. The review petitioner's arguments are a reiteration of previously raised and rejected points. In review jurisdiction, re-appreciation of evidence is not permissible, and differing views cannot be considered. The petitioners are attempting to rehash overruled contentions, which is not entertainable. No error apparent on the face of the record has been shown. Even if the court's finding were erroneous, that alone wouldn't justify revisiting the order. Given the above, the Review Application lacks merit and is liable to be dismissed.



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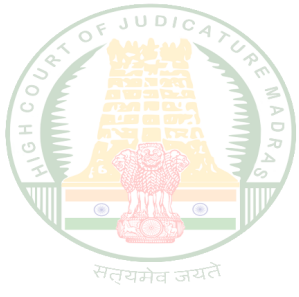
15. In the result, the Review Application is dismissed. No costs.

Consequently, the connected Miscellaneous Petition is also dismissed.

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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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