

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2015

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

Review Application No.115 of 2014

in

S.A.No.335 of 2010

Ramasamy Gounder (died)

1.Thulasimani

2.Rajathi

3.Lakshmi

4.Apporvachinthamani

... Applicants

v.

1.Sivasubramanian

2.Deivasigamani

3.Poonchilathal

.. Respondents

Review Application filed under section 114 of the Civil Procedure Code against the order dated 04.07.2014 passed in S.A.No.335 of 2010 on the file of this Court.

For Applicants : Mr.S.V.Jayaraman, Sr. Counsel  
for Mr.M.Devaraj

For Respondents : Mr.R.Subramanian  
for Mr.C.Prakasam – for R1

ORDER

By judgement dated 04.07.2014, this court, dismissed the Second Appeal in S.A.No.335 of 2010 and confirmed the concurrent findings of the courts below. The appellants have filed the above Review Application stating that this court has not framed proper substantial questions of law that arise for consideration.

2. Mr.S.V.Jayaraman, learned Senior Counsel appearing for the review applicants submitted that the applicants/appellants have raised additional substantial questions of law after serving a copy of the same on the learned counsel for the respondents. Further, the learned counsel on either side submitted that though this court has given findings with regard to those substantial questions of law, the said four questions of law were not extracted in the judgement.

3. Mr.R.Subramanian, learned counsel appearing for the 1<sup>st</sup> respondent submitted that this court has confirmed the findings of the courts below with regard to Éx.B6 settlement deed is not a valid document and the same shall not bind the plaintiff. That being the case, when the document is not binding on the plaintiff, there is no necessity to file a suit to set aside the said document.

4. When the document is not binding on the plaintiff, there is no

necessity to file a suit to set aside the said document. This Court in paragraph No.25 of the judgement has clearly held that Ex.B6 settlement is not a valid document and the same shall not bind the plaintiff. That apart, this court also has given findings with regard to other substantial questions of law.

5. The learned counsel appearing for the 1<sup>st</sup> respondent submitted that the additional substantial questions of law can be incorporated in the judgement without disturbing the findings rendered by this court.

6. It is true that by mistake, the additional substantial questions of law raised by the appellants in the second appeal were not incorporated in the judgement. Since I have given findings with regard to those substantial questions of law in the second appeal, I do not find any reason to interfere with the findings given in the second appeal.

7. In these circumstances, the following four substantial questions of law shall be included in paragraph No.12 of the judgement as additional substantial questions of law:-

“(a) Whether the courts below are right in finding that the settlement deed evacuated in favour of the appellants/defendants 3 to 6 by the 1<sup>st</sup> defendant as unsustainable in law in the absence of any challenge, prayer and the payment of the necessary court fee for the same in the plaint?

(b) Whether the courts below are right in finding that the settlement deed Ex.B6 was unsustainable in law when PW1 himself admitted in his cross examination that he knows about the purchases of the properties by his father in his individual capacity?

(c) Whether the courts below are right in not accepting the WILL marked as Ex.B14 when it was proved by the examination of the attesting witness as DW4?

(d) Whether the courts below are justified in holding that Ex.B14 have not been proved in spite of the examination of DW4, a witness to the execution of WILL?

8. The review application is disposed of as stated above. In other aspects, the judgement of this court passed in the Second Appeal shall remain unaltered. No costs.

28.07.2015

Note :

The Registry is directed to incorporate the following passage in paragraph No.12 and issue fresh copy of the judgement to both sides:-

"The appellants also raised the following additional substantial questions of law :-

(a) Whether the courts below are right in finding that the settlement deed evacuated in favour of the appellants/defendants 3 to 6 by the 1<sup>st</sup> defendant as

unsustainable in law in the absence of any challenge, prayer and the payment of the necessary court fee for the same in the plaint?

(b) Whether the courts below are right in finding that the settlement deed Ex.B6 was unsustainable in law when PW1 himself admitted in his cross examination that he knows about the purchases of the properties by his father in his individual capacity?

(c) Whether the courts below are right in not accepting the WILL marked as Ex.B14 when it was proved by the examination of the attesting witness as DW4?

(d) Whether the courts below are justified in holding that Ex.B14 have not been proved in spite of the examination of DW4, a witness to the execution of WILL?"

Rj

M. DURAISWAMY, J

Rj

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