

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:27.4.2015

CORAM

**THE HONOURABLE MR.JUSTICE T. MATHIVANAN**

**Rev. Application No.28 of 2014**

Sugirtham Rajagopal

... Applicant

Versus

1.G.Palani

2.S.Selvakumar

..Respondents

**Prayer:** Revision application is filed to review the order, dated 28.1.2014 and made in C.R.P.(PD).No.3632 of 2013 on the file of this Court.

For Petitioner: Mr. V. Ayyadurai

For Respondent No.1 : Mr.V. Lakshmi Narayanan

For Respondent No.2 : No appearance.

**ORDER**

This review application is filed by the applicant/first respondent after invoking the provisions under Section 114 r/w Order 47 Rule 1 of C.P.C. to review the order of this Court, dated

28.1.2014 and made in C.R.P.(P.D.)No.3632 of 2013 on the file of this Court.

2. The review applicant herein is the plaintiff in the suit in O.S.No.14192 of 2010 on the file of the learned V Assistant Judge, City Civil Court, Chennai, whereas the respondents 1 and 2 herein are the defendants 1 and 2.

3. The review applicant had filed the above suit as against the respondents seeking the relief of declaration to declare that the entire rent control proceedings initiated by the first respondent/D1 seeking the eviction of the review applicant/plaintiff in R.C.O.P.No.2107 of 2000 on the file of the learned XI Judge, Court of Small Causes, Chennai, followed by R.C.A.No.582 of 2005 on the file of the learned VIII Judge, Court of Small Causes, Chennai, which is culminated into filing of E.P.No.599 of 2009 on the file of the learned XI Judge, Court of Small Causes, Chennai, and the orders and decretal orders made in those proceedings are vitiated by fraud and amounting to void, non-est and unenforceable and to grant mandatory injunction directing the respondents/defendants to restore the possession of the suit property and also seeking the relief of declaration to declare that the review applicant/plaintiff is a tenant of the land alone and consequently, declare that she is entitled

for the benefit of Section 9 of the City Tenants Protection Act and also for permanent injunction.

4. It is apparent that along with the above suit, she had also filed an application in I.A.No.22245 of 2010 under Order 39 Rules 1 & 2 of C.P.C. seeking the relief of temporary injunction as against the respondents 1 and 2. That petition was allowed granting temporary injunction, against which the first respondent/D1 had preferred an appeal in C.M.A.No.74 of 2013 on the file of the learned I Additional Judge, City Civil Court, Chennai. That appeal was dismissed confirming the order of the court below.

5. Having been aggrieved by the judgment and decree, dated 24.7.2013 and made in the above said civil miscellaneous appeal, the first respondent/D1 had preferred a revision before this Court in C.R.P.No.3632 of 2013.

6. After hearing both sides, this Court has proceeded to allow the revision petition on 28.1.2014 after setting aside the judgment and decree, dated 24.7.2013 and made in C.M.A.No.74 of 2013 and the order, dated 17.4.2013 and made in I.A.No.22245 of 2010 and dismissing the application in I.A.No.22245 of 2010 with a direction to the trial Court to dispose of the suit in O.S.No.14192 of 2010 on merit, purely on question of law

as well as on the ground of maintainability, within a period of two months.

7. Now, the order, dated 28.1.2014 is sought to be reviewed in this review application.

8. Heard Mr. V. Ayyadurai, learned counsel appearing for Mr.M. Anbalagan, who is on record for the review applicant and Mr. V. Lakshmi Narayanan, learned counsel appearing for the first respondent.

9. Despite service of notice on the second respondent, he has not chosen to appear.

10. Mr.V. Ayyadurai, has advanced his arguments on the following four grounds:-

(a) This court has not adverted to the main ground on which the suit was framed and the relief sought for was to declare that the entire Rent Control Proceedings initiated by the first respondent/revision petitioner are vitiated by fraud.

(b) The non consideration of the vital factor resulted in making those unwarranted observations would constitute, "error apparent" within the meaning of Order 47 Rules 1 and 2 of C.P.C. and consequently, the interest of justice requires to expunge such of those

observations made in regard to the main suit.

(c ) The reasoning, finding and conclusion that explanation VIII to Section 11 is made applicable to the present suit is error apparent on the face of record in the light of the fact that the suit was one for setting aside the entire rent control proceedings including the order and decretal order made in R.C.A.No.582 of 2005 and that the case set out in the plaint was solely based on an independent cause of action and that the issues, viz., whether the defendants are guilt of fraud and collusion in obtaining the order in Rent Control Proceedings resulting in the illegal dispossession of the plaintiff, involved in the suit based upon the pleadings of the respective parties to the lis are totally different.

(d) It is settled proposition of law that fraud vitiates all solemn act and is an exception to doctrine of merger and that fraud may be agitated even in collateral proceeding regardless the finality was attained.

11.

**Sub Rule 1 to Rule 1 of Order 47 of C.P.C. enacts as under:-**

**" 1. Application for review of judgment** - (1) Any person considering himself aggrieved :-

(a) by a decree or order from which an appeal is allowed but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c ) by a decision on a reference from the Court of Small Causes, and 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, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

11a. From the fabric of the languages employed in sub-rule 1, this Court understands that for filing an application for review, the following three ingredients are very much essential:-

Any person considering himself aggrieved by a decree or order, may file an application for review:-

(a) 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;

(b) On account of some mistake or error apparent on the face of the record; or

(c ) For any other sufficient reason.

12. With reference to the phraseology, "Error Apparent", the Hon'ble Apex Court in **Moran Mar Basselios Catholicos and another vs. Most Rev. mar Poulouse Athanastus and others** (AIR 1954 SC 526 : 1954 Ker LJ 385 : 1954 SCJ 736 : 1955 (1) SCR 520), has held as under:-

*" A misconception by the Court of a concession made by the Advocate or of the attitude taken up by the party appears to be a ground analogous to the grounds set forth in the first part of the review section and affords a good and content ground for review.*

*Further when the error complained of is that the Court assumed that a concession had been made when none had, in fact, been made or that the Court misconceived the terms of the concession or the scope and extent of it, it will not generally appear on the record but will have to be brought before the Court by way of an affidavit and this can only be done by way of review.*

*The misconception of the Court must be regarded as sufficient reason analogous to an error on the face of the record. In Court's opinion, it is permissible to rely on the affidavit as an additional ground for review of the judgment."*

13. In the light of the observation made in **Moran's case**, cited supra, this Court is of view that the review applicant herself has vice versa misconstrued or misunderstood the order of this Court, dated 28.1.2014 and made in C.R.P.No.3632 of 2013 and therefore, at the first instance, this Court would like to say that the review applicant, who is the first respondent in the revision petition has erroneously approached this Court to review the order without any basis.

14. As argued by Mr. V. Ayyadurai, the observation of this Court does not seem to be **"error apparent on the face of record"** to bring this review application within the amplitude of Order 47 Rule 1 of C.P.C.

15. To screen the entire background of the case in short form, the following facts are absolutely necessary:-

16. An extent of 1630 sq.ft. of land comprised in R.S.No.246/4, Block No.25, Nungambakkam Village was originally belonged to the second respondent herein, viz., S.Selvakumar. He had leased out the vacant site to one Khader Moideen, who in turn, had put up a thatched shed to an extent of 100 sq.ft. for his business purpose.

17. The said Khader Moideen had appointed one Vaikundaraman as his Power Agent through whom the review applicant had purchased the ownership of the superstructure put up by the said Khader Moideen and also the leasehold right in respect of the site leased out to Khader Moideen by a registered sale deed, dated 27.4.1985.

18. The review applicant has claimed that she became the successor in interest with reference to the ownership of the superstructure and as such she is entitled for the statutory benefit available to her vendor under Section 9 of the City Tenants Protection Act.

19. Then the review applicant came to understand that the second respondent herein 'viz', Mr.S.Selvakumar, who is the owner of the vacant site had sold the same along with the superstructure in favour of the first respondent by virtue of a registered sale

deed, dated 23.6.1994.

20. After coming to know about the sale of the suit property in favour of the first respondent/D1, the review applicant had instituted a suit for permanent injunction as against the respondents 1 and 2 in O.S.No.5065 of 1994 on the file of the learned XVII Assistant Judge, City Civil Court, Chennai, claiming her ownership over the superstructure in view of her entitlement for statutory benefits. That suit was decreed in favour of the review applicant granting the relief of permanent injunction on 25.10.2000.

21. The first respondent herein being the first defendant in that suit had filed an appeal in A.S.No.113 of 2001 against the judgment of the suit, dated 25.10.2000.

22. After hearing both sides, the said first appellate court had allowed the appeal on 27.6.2002 in favour of the first respondent/D1 after setting aside the judgment and decree, dated 25.10.2000 and made in O.S.No.5065 of 1994.

23. Challenging the judgment and decree of the first appellate court, the review applicant had filed a second appeal before this Court in S.A.No.1943 of 2002 and according to the review applicant that second appeal

is still pending.

24. Further, she has claimed that the judgment and decree of the lower appellate court in A.S.No.113 of 2001 was stayed in C.M.P.No.16514 of 2002.

25. In the meanwhile, the first respondent/D1 being the owner of the vacant site had filed a rent control original petition in R.C.O.P.No.2107 of 2000 on the file of the learned XI Judge, Court of Small Causes, Chennai, as against the review applicant seeking eviction. That rent control petition was originally dismissed on 4.7.2004.

26. Challenging this order, the first respondent/D1 had preferred an appeal in R.C.A.No.582 of 2005 on the file of the learned Rent Control Appellate Authority (VIII Judge, Small Causes Court) Chennai. The said R.C.A was allowed in favour of the first respondent/D1.

27. It is pertinent to note here that the review applicant against whom the order of eviction was passed in R.C.A.No.582 of 2005 had never challenged that eviction order and therefore, the judgment and decree passed by the rent control appellate authority has become final.

28. On the strength of the decree made in R.C.A.No.582 of 2005, the first respondent/D1 had taken out an execution proceedings in E.P.No.599 of 2009 for taking delivery of possession. In that execution proceedings, an order of delivery of possession was passed on 30.12.2009 and thereafter, the physical possession of the property was also delivered to the first respondent/D1.

29. The records would go to reveal that the review applicant had filed two applications in E.A.No.7 of 2010 and E.A.No.58 of 2010 for re-delivery of the possession of the suit property and also to return her articles, which were said to have been kept in the schedule mentioned premises. Both the applications were subsequently dismissed. Now the first respondent/D1 has been in possession and enjoyment of the suit property.

30. After effecting the delivery of physical possession of the property, the review applicant had filed the suit in O.S.No.14192 of 2010 on the file of the learned V Assistant Judge, City Civil Court, Chennai, seeking the relief of declaration that the entire rent control proceedings in R.C.O.P.No.2107 of 2000 and R.C.A.No.582 of 2005 as well as the execution proceedings in E.P.No.599 of 2009 are vitiated and amounting to void, non-est and unenforceable and also for mandatory injunction directing the respondents 1 and 2 herein to

restore the possession of the suit property and also to declare that she is entitled for the benefit under Section 9 of the City Tenants Protection Act.

31. It is settled proposition of law that the order of eviction passed by the rent controller or by the rent control appellate authority cannot be questioned before a civil court because the civil court does not have jurisdiction to entertain such suit to decide the question as to whether the order passed by the learned Rent Controller or the learned Rent Control Appellate Authority is valid or not.

32. This question has been decided by the High Court of Punjab and Haryana in the ***Ambala Bus Syndicate (P) Ltd. vs. Indra Motors (LAWS (P&H) 1968-7-21)***.

33. The High Court of Punjab and Haryana has held as under:-

**"If a person moves a Rent Controller for eviction of another person on the ground that he is his tenant who had, by his acts or omissions, made himself liable to be evicted on any one of the grounds for eviction, and if the tenant denies that the Plaintiff is his landlord, the Controller has to decide the question whether there was a relationship of landlord and tenant between the parties. So that it is the jurisdiction of the Rent Controller to decide such a question and where he makes an order on such a question, that order is made final by the statute, of which the**

obvious consequence is that such a final order is not open to question in any proceedings in any other forum outside the statute including an ordinary Civil Court."

34.

Admittedly, the review applicant has not challenged the order of eviction passed by the learned Rent Control Appellate Authority in R.C.A.No.582 of 2005 and hence, it has become final and remains unchallenged till this date. The order of eviction passed in R.C.A.No.582 of 2005 is a valid order passed by the court of competent jurisdiction after adjudication on merits as well as on the rights of the parties which definitely operates as res judicata in subsequent suit in O.S.No.14192 of 2010, which is now pending on the file of the learned V Assistant Judge, City Civil Court, Chennai.

35. Therefore, this Court does not have any hesitation to repeat it's observation saying that the suit in O.S.No.14192 of 2010 filed by the review applicant before the above said court appears to be vexatious one as well as an attempt of relitigation without rendering due respect to the rule of law as well as the court.

36. With reference to the relitigation and abuse of process of court, this Court would like to place reliance upon the decision in **K.K.Modi vs. K.N.**

*Modi and others (MANU/SC/0092/1998 : AIR 1998 SC 1297 : (1998) 3 SCC 573)*. The observations of the Hon'ble Apex Court in paragraph Nos.43, 44, 45 and 46 are very much relevant, which are extracted as under:-

"43. One of the examples cited as an abuse of the process of Court is re-litigation. It is an abuse of the process of the Court and contrary to justice and public policy for a party to re-litigate the same issue which has already been-*tried* and decided earlier against him. The re-agitation may or may not be barred as *res judicata*. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of Court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the Court. Frivolous. or vexatious proceedings may also amount to an abuse of the process of Court especially where the proceedings are absolutely groundless. The Court then has the power to stop such proceedings summarily and prevent the time of the public and the Court from being wasted. Undoubtedly, it is a matter of Court's discretion whether such proceedings should be stopped or not and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised and exercised only in special cases. The Court should also be satisfied that there is no change of the suit succeeding.

44. In the case of *Greenhalghv. Mallard*, 1947 (2) AER 255, the Court had to consider different proceedings on the same cause of action for conspiracy, but supported by different averments. The Court held that if the plaintiff has chosen to put his case in one way, he cannot thereafter bring the same transaction before the court, put his case

in another way and say that he is relying on a new cause of action. In such circumstances he can be met with the plea of res judicata or the statement or plaint may be struck out on the ground that the action is frivolous and vexatious and an abuse of the process of Court.

45. In *McIlkenny v. Chief Constable of West Midlands Police Force and Another*, 1980 (2) AEF 227, the Court of Appeal in England struck out the pleading on the ground that the action was an abuse of the process of the Court since it raised an issue identical to that which had been finally determined at the plaintiffs' earlier criminal trial. The Court said even when it is not possible to strike out the plaint on the ground of issue estoppel, the action can be struck out as an abuse of the process of the Court because it is an abuse for a party to re-litigate a question or issue which has already been decided against him even though the other party cannot satisfy the strict rule of res judicata or the requirement of issue estoppel.

46. In the present case, the learned Judge was of the view that the appellants had resorted to two parallel proceedings, one under the Arbitration Act and the other by way of a suit. When the order of interim injunction obtained by the appellants was vacated in arbitration proceedings, they obtained an injunction in the suit. The learned Single Judge also felt that the issues in the two proceedings were identical, and the suit was substantially to set aside the award. He, therefore, held that the proceedings by way of a suit was an abuse of the process of Court since it amounted to litigating the same issue in a different forum through different proceedings.

37. In the light of the observation made by the Apex Court in **K.K. Modi's case**, this Court finds that the suit in O.S.No.14192 of 2010 is definitely an

abuse of process of Court and also amounts to relitigation when the order of eviction passed in R.C.A.No.582 of 2005 remains unchallenged by the review applicant.

38. The suit in O.S.No.14192 of 2010 itself has been barred by the doctrine of res judicata as contemplated in explanation 8 to Section 11 of C.P.C.

39. The arguments advanced by Mr.V.Ayyadurai, learned counsel appearing for the review applicant is not able to be countenanced. It cannot be stated that the respondents 1 and 2 herein had played fraud upon the rent control appellate authority having their hands in glove together and that the order of eviction passed by the learned rent control appellate authority has lost it's sanctity and could not be enforced and that the order of eviction passed by the learned rent control appellate authority is exempted from the amplitude of the doctrine of merger.

40. In this connection, this Court would like to place it on record that the doctrine of merger is neither a doctrine of constitutional law nor a doctrine statutorily recognized. It is a common law doctrine founded on principles of propriety in the hierarchy of justice delivery system. On more occasions than one the Hon'ble Apex Court had an opportunity of dealing with the

doctrine of merger.

41. In

**Commissioner of Income-tax, Bombay vs. M/s. Amritilal Bhogilal and Co. (AIR 1958 SC 868)**, the Apex Court has held as under:-

"There can be no doubt that, if an appeal is provided against an order passed by a tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the decision of the tribunal, it is obvious that it is the appellate decision that is effective and can be enforced. In law the position would be just the same even if the appellate decision merely confirms the decision of the tribunal. As a result of the confirmation or affirmance of the decision of the tribunal by the appellate authority the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement."

42. In the light of the above observation made by the Apex Court in the afore stated decision, this Court is of view that the order of eviction passed by the learned Rent Control Appellate Authority cannot be termed as a nullity.

43. As discussed supra, to accept the arguments of Mr. V. Ayyadurai that the order of eviction was obtained by the first respondent/D1 by playing fraud upon the learned rent control appellate authority.

44. This Court is hardly able to see an iota of base. It cannot merely be argued on air.

45. Mr. V.

Ayyadurai, while advancing his arguments has placed reliance upon the following four decisions:-

**a. S.P. Chengalvaraya Naidu (Dead) by L.Rs. vs. Jagannath (Dead) by L.Rs. and others ((1994) 1 SCC 1).**

**b. Union of India and others vs. Ramesh Gandhi ((2012) 1 SCC 476).**

**c. Hamza Haji vs. State of Kerala and another ((2006) 7 SCC 416).**

**d. A.V. Papayya Sastry and others vs. Govt. of A.P. and others ((2007) 4 SCC 221).**

46. All the four decisions are on the same line to stress the point that it can be questioned even in collateral proceedings where the judgment and decree is obtained by fraud.

47. In **S.P. Chengalvaraya Naidu (Dead) by L.Rs. vs. Jagannath (Dead) by L.Rs. and others ((1994) 1 SCC 1)**, the Division Bench of the Apex Court, through Hon'ble Mr. Justice Kuldeep Singh has observed as under:-

**"The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants.**

The courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. A person who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation. A judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree - by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud in the court as well as on the opposite party."

48. On coming to the instant case on hand, as argued by Mr. V.Ayyadurai, the order of eviction passed by the learned Rent Control

Appellate Authority could have been challenged on the ground of fraud before this Court by preferring a revision. But this has not been done by the review applicant.

49. The latches and acquiescence on the part of the review applicant cannot be attributed to say that the order of eviction passed by the learned rent control appellate authority is exempted from the doctrine of merger and that the review applicant can file a suit before the civil court questioning the validity of the order of eviction.

49a. As observed in ***S.P. Chengalvaraya Naidu's case***, cited supra, the review applicant can challenge the order of eviction in any court even in collateral proceedings provided, that court is having competent jurisdiction to entertain the proceedings.

50. This is absolutely a wrong notion and misconception of law because the civil court does not have jurisdiction to entertain the suit questioning the validity of the order of the learned Rent Controller or the learned Rent Control Appellate Authority as there is a specific provision under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, that is, the enabling provision which could very well be availed by the review applicant. But he had kept quiet for a long time, instead, he has filed the above suit before

the V Assistant Judge, City Civil Court, Chennai, seeking the relief of declaration to declare that the order of eviction passed by the learned Rent Control Appellate Authority is non-est in law. This is absolutely wrong, because the learned V Assistant Judge, City Civil Court, Chennai, has committed a jurisdictional error in entertaining the suit, for which he is not empowered.

51. This Court has also gone through the other decisions cited by Mr.V.Ayyadurai and found that the facts and circumstances narrated in those cases are not made applicable as the present case is somewhat different and not in analogous with the facts narrated therein.

52. In this connection, this Court would like to quote the words of Lord Denning with reference to the matter of applying precedents have become locus classicus ( means a passage that has become a standard for the elucidation of a word or subject :- classic case or example).

*"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide the cases(as said by Cordozo) by matching the colour of one case against*

*the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."*

53. As

observed by the Apex Court in ***Dr.Subramanian Swamy vs. State of Tamil Nadu and others ((2014) 5 SCC 75)***, even an erroneous judgment also would operate as resjudicata. Hence, the judgment and decree passed in R.C.A.No.582 of 2005 operates as constructive res judicata. The suit in O.S.No.14192 of 2010 itself is suffered by explanation 8 to Section 11 of C.P.C.

54. Since the trial court, viz., the learned V Assistant Judge, has erroneously taken the suit in O.S.No.14192 of 2010 on his file to question the above said rent control proceedings in R.C.A.No.582 of 2005, certainly, it is a jurisdictional error and since this Court is having supervisory power under Article 227 of the Constitution of India, it cannot simply close it's eyes, instead, it can stretch its hands over the wrong committed by the trial court to set at right.

With this observation, the review application is dismissed upholding the order of this Court, dated 28.1.2014 passed in C.R.P.(P.D.) No.3632 of 2013. However, there will be no order as to costs.

rnb

27.4.2015

Index:Yes/No.

Internet:Yes/No.

To

The V Assistant Judge, City Civil Court, Chennai.

**T. MATHIVANAN, J.**

RNB

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DATE: 27.4.2015

