

C.M.P.No.320 of 2013
in
O.S.A.No.148 of 1992

V.RAMASUBRAMANIAN,J
AND
P.R.SHIVAKUMAR,J

(Order of the Court was made by V.RAMASUBRAMANIAN,J)

The 2nd plaintiff in the suit in C.S.No.335 of 1983, which was decreed on 28.02.1992 and which decree was confirmed by a Division Bench on 23.06.2010 in O.S.A.No.148 of 1992, has come up with the above petition seeking modification of the Judgment and decree by incorporating a direction directing the 1st respondent/Bank which was the 1st plaintiff, to pay a sum of Rs.10,80,748.44 together with interest.

2. Heard Mr.M.Kamalanathan, learned counsel for the petitioner/2nd plaintiff, Mr.G.Bharadwaj, learned counsel for the 1st respondent/Bank and Ms.Sowmya, learned counsel for the 2nd respondent/Insurance Company.

3. The 1st respondent/Bank and the petitioner herein joined together and filed a suit in O.S.No.335 of 1983 on the file of this Court for recovery of money. The suit was decreed by a learned Judge, by a Judgment dated 28.02.1992.

4. As against the said Judgment and decree, the 2nd

respondent/Insurance Company, which was the sole defendant in the suit, filed an appeal in O.S.A.No.148 of 1992. The appeal was dismissed by a Division Bench, by a Judgment dated 23.06.2010. After 3 years, the 2nd plaintiff has come up with the above petition seeking modification to direct the 1st respondent/Bank, which was the 1st plaintiff, to pay the amount, which was earlier deposited and allegedly withdrawn by the 1st respondent/Bank.

5. We fail to understand as to how such a petition for modification is maintainable in law. The petition is filed purportedly under Section 151 of the Code of Civil Procedure. The decree is not assailed as containing a clerical or arithmetical mistake. The 1st respondent/Bank was actually a co-plaintiff along with the petitioner herein. The decree was actually in favour of both the plaintiffs. Therefore, by way of a miscellaneous petition filed after three years of the decision of the Division Bench, the 2nd plaintiff cannot virtually seek a decree against the co-plaintiff, especially when the appeal has resulted in favour of both the plaintiffs jointly. Therefore, this petition is dismissed.

(V.R.S.J.) (P.R.S.J.)
23.03.2015

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