

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

Review Application No.297 of 2015

in

S.A.No.1457 of 2008

Lakshmi

... Petitioner

-Vs-

Kasiammal (deceased)

1.N.Suriya Deepan

... Respondent

Review Application filed under Order XLVII Rules 1 & 2 r/w.
Section 114 of the Code of the Civil Procedure against the order dated
08.06.2007 passed by this Court in S.A.No.1457 of 2008.

For Review Applicant : Mr.G.Karthikeyan

For Respondent : Mr.R.Sunil Kumar

ORDER

The submissions made by Mr.G.Karthikeyan, learned counsel for

the petitioner are heard.

2. This is a review petition filed under Order XLVII Rule 1 and 2 r/w. Section 114 of the Code of Civil Procedure to review the judgment of this Court dated 12.12.2014 in S.A.No.1457 of 2008.

3. The suit was filed by Kasiammal seeking a direction to Lakshmi, the petitioner herein to hand over possession of the suit property, after removing the thatched shed put up by her in the suit property and also for recovery of mesne profit.

4. The trial Court, after hearing, decreed the suit and on appeal, the lower appellate Court allowed the appeal and set aside the decree passed by the trial Court and dismissed the suit. As against the same, Late Kasiammal filed the second appeal. During the pendency of the second appeal, Kasiammal died and the respondent herein namely Suriya Deepan, who is the grandson of Kasiammal born through her deceased daughter got impleaded and pursued the appeal. After a detailed consideration, this Court allowed the second appeal, set aside the decree of the lower appellate Court and confirmed the decree of the trial Court. Now the present petition has been filed by the petitioner herein for reviewing the said judgment. The only ground

raised in the petition is that there was a previous litigation in which the title of Kasiammal was negated and the documents relating to the previous litigation, especially the judgment, was not produced and that had the judgment in the previous suit been taken into account, the result would have been the other way.

5. It is hard to accept the said ground to be a valid ground for reviewing the judgment of this Court dated 12.12.2014 in S.A.No.1457 of 2008. The previous judgment can be projected only as a res judicata provided the judgment was inter-parties. It is not the case of the petitioner that the parties to the previous case were one and the same. It was a lis between Late Kasiammal and a third party. How the said judgment is relevant has to be established only by adducing evidence. If such is the case, the same cannot be made the ground for reviewing the judgment. Again, even if it happened to be a judgment inter-parties, unless it was pleaded as a res judicata, no evidence could be allowed to be adduced. Thirdly, Late Kasiammal sought the reliefs based on permissive possession and in such an event, the question of title of the plaintiff Late Kasiammal would not be relevant if such permissive possession is established. This Court, after going through the records, held in clear terms that the finding of the

lower appellate Court was perverse and also held that the review petitioner was continuing possession even after the licence was revoked. Hence, this Court comes to the conclusion that no ground for reviewing has been made and the review petition deserves to be rejected at the stage of admission.

Accordingly, the review application is rejected. No costs.

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Index: Yes/No
Internet: Yes/No
gpa

P.R.SHIVAKUMAR.J.,

gpa

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