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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Rev.A.No.75 of 2015
in A.S.No.123 of 2013

1. J.Santhanakrishnan
2. P.Rajeswari
3. J.Soundarapandian
4. E.Sathyavathi

.. Applicants

Vs.

1. J.Chandrasekar
2. J.Jayaseelan
3. J.Premchandran
4. V.Parimala Jayanthi

.. Respondents

PRAYER: Review Application filed under Order XLVII Rule 1 of C.P.C. r/w.Sec.114 of Civil Procedure Code against the judgment and decree dated 28.03.2014 made in A.S.No.123 of 2013 passed by the Hon'ble Mr.Justice R.S.Ramanathan in exercise of the Appellate jurisdiction of this Court.

Appeal Suit filed under Section 96 of CPC, r/w order XLI Rule 1 of CPC against the Judgment and decree, dated 05.03.2010 passed in I.A.No.38 of 2007 in O.S.No.1437/2003 on the file of the Additional District Judge, II Fast Track Court, Chennai.

For Petitioners: Mr.T.Dhanyakumar

For Respondents : Mr.P.B.Balaji
for Mr.P.B.Ramanujam

O R D E R

The review application has been filed to review the judgment and decree passed by this Court in A.S.No.123 of 2013 dated 28.03.2014 on the ground of error apparent on the face of record.



2. Heard the learned counsel appearing for the applicants and the learned counsel appearing for the respondents.

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3. It is the contention of the review petitioner that the parties to the suit are acting as two groups viz., Plaintiff, D1, D6 and D7 are in one group ('A' parties) and D2, D4 and D5 are in other group ('B' parties). The property is to be divided into half share and deliver the same to each group. The sale of the property will cause hardship not only to the 'A' parties but also to the 'B' parties. This Court has not taken into consideration of the written statement that the defendants 2, 4 and 5 uniformly maintain in the written statement and in oral evidence that the division of the suit property is possible only after demolition of the same.

4. The learned counsel appearing for the appellants has contented that one half of the property allotted as 4 shares, other are sought to be sold. According to him, the properties are divisible but can be allotted to all the parties in 1 unit, so that, they can enjoy the property. Hence, prayed for review.

5. The learned counsel appearing for the respondents submits that this Court has fairly analysed the facts in para 9 and 10 of the judgment dated 28.03.2014 and there is no error apparent on the face of the record. This review application is just like an appeal challenging the decree and judgment of the Court and prays for dismissal of the suit.

6. I have perused the judgment of this Court. This Court in A.S.No.123 of 2013 in para 9 and 10 has held as follows:

"9. Further, in the eastern half, the constructed area is less and open space is more and the western half constructed area is more. Further, one group cannot be allowed the half share and it would be difficult for one group to enjoy various blocks shown in the one half. Similarly, as per Ex.C4 plan also, the property cannot be divided into two half shares. As per Ex.C4 plan, if the entire property is divided into two half and in that case, it cannot be further divided into four shares on each side and if the properties were divided as per Ex.C4 plan, the common space has to be left open by each group and thereafter, it is not possible for the sharers to put up construction in the remaining area. As per Ex.C6 plan, which was taken into



consideration and adopted for passing final decree, the western side was allotted to the appellants and the 3rd defendant together and eastern side was allotted the plaintiff/defendants 1, 6 and 7.

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10. As stated supra, the western half allotted to the defendants 2 to 5 cannot be enjoyed by the parties and each one cannot have 1/8th share in the western half and the common passage left to be enjoyed by common, will not be sufficient for each party to have access to their portions for getting the sanctioned building plan by constructing the building in their portions. Therefore, according to me, the Advocate Commissioner was right in holding that the property in 'A' schedule is incapable of division and the property can be sold in public auction among the parties and therefore, the court below ought to have exercised the option given under the Partition Act, allowed I.A.No.17 of 2010 and allowed the parties to purchase the other shares, by quoting the bid and if the parties were not able to purchase the share of other shares, then the court could sell A schedule property in public auction. I, therefore, set aside the final decree passed in I.A.No.38 of 2007 in O.S.No.1437 of 2003 and direct the court below to permit the parties to purchase the share of the other shares under the provisions of 3 and 4 of the Partition Act and if this is not possible, 'A' schedule property can be sold in public auction. In so far as 'B' schedule of property is concerned, there is no dispute and the property can be divided among the parties as per the final decree and the final decree in respect of 'B' schedule property is confirmed. Therefore, the final decree in respect of 'A' schedule property alone is set aside. Accordingly, the points for considerations answered."

7. Now the Review Application is filed to allot the shares under Eastern side contrary to the above judgement. Absolutely, in entire judgement of the Court, there is no error apparent on the face of the record. In fact, the learned single judge has analysed the facts and decided the appeal. When there is no error apparent on the face of the record, judgments cannot be reviewed according to the whims and fancies of the parties.

8. It is relevant to refer the judgment in the case of P.Lakshmanan (Deceased) and others vs. Kamalasaraswathi and



others reported in 2018 (5) CTC 285, this Court has held that unless a error apparent on the face of record, the review cannot be possible and another judgment in the case of Kamlesh Verma vs. Mayawati and others reported in 2013 (8) SCC 320, the Hon'ble Apex Court, after examining various Judgments passed earlier has held as follows:

" 12. This Court has repeatedly held in various Judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only there is an error apparent on the face of record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient....."

9. In the above Judgment, the Hon'ble Apex Court has laid down the principles as under:

"19. review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of order XL VII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the Judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned Judgment in the guise that an alternative view is possible under the review jurisdiction."

10. Considering the well settled principles of law and the inferences made in this application, I do not find any error apparent on the face of record to re-appreciate or review the well settled Judgment of the learned single Judge. Accordingly, the review application is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



To

The Additional District Judge,
II Fast Track Court,
Chennai.

+2cc to Mr.T.Dhanyakumar, Advocate Sr.31261, 31804
+1cc to Mr.P.B.Ramanujam, Advocate Sr.31387

Rev.A.No.75 of 2015
in A.S.No.123 of 2013

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srg 04/07/2019