

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.7.2015

CORAM

THE HONBLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

Review Application No.156 of 2004

Jayaraman .. Applicant

Vs.

1. Chellammal
2. Chinnasamy
3. Seeli Naicker
4. Ponnuthayammal
5. Somu
6. Balakrishnan
7. Sadhasivam
8. Sethu
9. Sundari
10.Kanaga
11.Seethalakshmi

.. Respondents

Petition under Order XLVII, Rule 1, CPC, to review the judgment dated
09.01.2003 made in A.S.No.250 of 1987 on the file of this Court.

For Applicant : Mr.K.Srinivasan, S.C.
For Mr.J.Antony Jesus
For Respondent-1 : Mr.P.Prem Kumar

ORDER

(Made by V.Ramasubramanian,J.)

This is an application seeking review of a common judgment and
decree delivered by a Division Bench way back on 09.01.2003 in A.S.Nos.250
and 783 of 1987.

2. Heard Mr.K.Srinivasan, learned senior counsel for the review applicant and Mr.P.Prem Kumar, learned counsel for the first respondent.

3. The respondents 1 and 2 herein filed a suit in O.S.No.114 of 1982 on the file of the Sub Court, Dindigul, praying for a decree of partition and separate possession of their 13/15 share in the properties. By a judgment and decree dated 31.12.1986, the trial Court directed partition and separate possession of the plaintiffs 13/15 share in suit A Schedule properties.

4. As against the said judgment and decree, the defendants 1 and 3 came up with an appeal in A.S.No.250 of 1987. The first plaintiff filed an independent appeal in A.S.No.783 of 1987. By a common judgment dated 09.01.2003, a Division Bench of this Court dismissed both the appeals. By the said judgment and decree, the preliminary decree for partition and separate possession of the plaintiffs 13/15 share in Schedule A properties was confirmed.

5. Aggrieved by the said common judgment, the third defendant in the suit has come up with the above application for review.

6. The main ground on which the applicant seeks review of the judgment is that this Court held the examination of one of the attestors as

insufficient for upholding the validity of the Will. In paragraph 17 of its judgment, this Court found fault with the review applicant for not examining the second attester. The grievance of the review applicant is that it is not necessary to examine both the attesting witnesses and that once one of them is examined, the same is sufficient.

7. But, unfortunately for the review applicant, this is not a ground that is available under Order XLVII, Rule 1, CPC. It may be a ground available for the review applicant to take up the matter on appeal to the Supreme Court. There is no error apparent on the face of the record. The parameters of Order XLVII, Rule 1, CPC are not satisfied.

8. We have one more reason for the dismissal of the review application. During the pendency of the review application, a final decree has already been passed, execution petition filed and possession also handed over. Therefore, the review application is dismissed as devoid of merits. No costs. Consequently, CMP No.14993 of 2004 is also dismissed.

Index : Yes/No
Internet : Yes/No

(V.R.S.J.) (T.M.J.)
06.7.2015.

kpl

V.RAMASUBRAMANIAN,J,
and
T.MATHIVANAN,J.

kpl

Rev.A.No.156 of 2004.

06.7.2015.