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Review Apl.(MD).No.106 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.01.2022

pronounced on: 03 .02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

Rev.Application(MD).No.106 of 2013

in

S.A.No.178 of 2006

and

MP(MD).No.1 of 2013

1.Jegathesan

2.Jeya Gopal

3.Thangasekar

4.Tharmathai

5.Gunasekar

6.Seeni Pushpam

7.Anbarasan

...Review Petitioners/Respondents 13 to 19

Vs

1.P.Chellathaiammal

2.K.Thavasivel Nadar

3.Periapirati

4.S.Thangammal

5.Alaguraj

6.M.Gurusamy

7.P.Guruvammal

8.M.Manickam

9.M.Gopal



10.M.Kamaraj

11.M.Dharmaraj

12.P.Senthoorpandian

....Respondents

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(R12 is impleaded vide Court order dated 27.09.2021 made in CMP (MD).No.1823 of 2020 in Rev.Aplc(MD).No.106 of 2013)

Prayer: Review Application is filed under Order 47 Rule 1 of C.P.C r/w Section 114 C.P.C against the judgment and decree dated 27.09.2012 made in S.A.(MD).No.178 of 2006 by the Hon'ble Mr.Justice.R.Karuppiah.

For Petitioners : Mr.M.Ajmal Khan
Senior Counsel

For Respondents : Mr.M.P.Senthil

JUDGMENT

The present review application has been filed by the respondents in S.A(MD).No.178 of 2006 which was disposed of on 27.09.2012.

2.The second appeal arises out of a suit for partition filed by the appellant in the second appeal. She had contended that the suit schedule properties are the self acquired properties of her father Thangavel Nadar who passed away on 26.09.1972. According to the plaintiff, the said Thangavel Nadar had left behind the plaintiff and the defendants 1 and 2 as his legal heirs and hence, she claimed 1/3rd share in the suit schedule properties.

3.The second defendant who contested the suit filed a written statement contending that there was an oral partition in the year 1972, in which, the suit schedule properties have been partitioned between the first and second defendant. The plaintiff has orally relinquished her share in the suit schedule properties. That apart, the plaintiff has chosen to include only the properties allotted to the share of the second defendant in the oral partition and has not chosen to include the properties allotted to the share of the first defendant. He further contended that the plaintiff has lost her right to claim partition in view of ouster.

4.The trial Court arrived at a finding that the suit schedule properties are self acquired properties of Thangavel Nadar and the second defendant has not proved the oral partition. The trial Court also held that the first defendant has not proved the plea of ouster. The trial Court further held that the plaintiff has not specifically pointed out the properties that were left out and hence, the plea of partial partition cannot be considered.



5.The First Appellate Court proceeded to hold that the first defendant has proved oral partition and also the plea of ouster. The First Appellate Court further held that that the suit is bad for partial partition. On the above said findings, the First Appellate Court allowed the appeal filed by the first defendant and dismissed the suit.

6.The plaintiff filed a second appeal and the learned Single Judge was pleased to hold that the second defendant has not proved the oral partition. The learned Single Judge also proceeded to hold that PW1 has not admitted the oral partition in the evidence. A perusal of evidence of PW1 reveals that she has only admitted the oral partition regarding the house property and not the oral partition regarding the agricultural properties. Based upon the said findings, the learned Single Judge allowed the appeal filed by the plaintiff and restored the decree of the trial Court. As against the said judgment, the present review application has been filed on the ground that the learned Single Judge has not properly appreciated the deposition of PW1.

7.According to the learned Senior Counsel appearing for the review applicants, PW1 in her deposition has clearly admitted that an oral partition has taken place not only with regard to the house properties, but also with regard to the agricultural properties. The learned Senior Counsel further contended that she has admitted in her deposition that some of the properties that were allotted to the share of the first defendant have not been included in the suit. Hence, he contended that there is an error apparent on the face of the record to the effect that the deposition of PW1 has not been appreciated by the learned Single Judge.

8.Per contra, the learned counsel for the respondents contended that the second defendant in his written statement has clearly admitted that the oral partition has taken place only between the brothers excluding the plaintiff. Even according to the second defendant, the plaintiff has orally relinquished her share. In view of the said averment, any alleged admission made on the part of the plaintiff would not deprive the plaintiff of her right to claim partition in the suit schedule property. He further contended that an erroneous appreciation of deposition cannot be a basis for reviewing the judgment and the same is beyond the scope of Order 47 Rule 1 CPC.

9.I have carefully considered the submissions on either side.

10.The only ground on which the present review application has been filed is that the learned Single Judge has not properly appreciated the deposition of PW1. According to the learned Senior Counsel appearing for the review petitioners, the deposition of PW1 has not been considered in entirety and the plaintiff has admitted that not only the house property but also the agricultural



properties have been partitioned among the brothers. The appreciation of deposition of a party in a different manner by the learned Single Judge cannot be a ground to entertain the review. If the review is entertained on the said ground, it would amount to re-appreciation of the evidence by the Review Court. This would amount to re-arguing the second appeal once again. Hence, the grounds raised by the learned Senior Counsel does not warrant interference by this Court under Order 47 Rule 1C.P.C. The learned Senior Counsel appearing for the review applicants further contended that he may be given liberty to include those properties that were left out by the plaintiff in the suit, in the final decree proceedings.

11.Our High Court in C.R.P(MD).Nos. 2694 and 2695 of 2012 dated 03.01.2013 in a judgment rendered by Hon'ble Mr.Justice.G.Rajasuria has held as follows:

"8.....The Court has to strike a balance between the two as otherwise it would lead to a murky situation. The Lower Court observed as though in a separate suit the parties can work out their remedies. I would like to discountenance such view and observe that the partition suit should be comprehensive enough in encompassing all the properties of the parties concerned. Hence I would like to set aside the order of the Lower Court and remit the matter back to the Lower Court so as to enable all the parties to adduce additional documentary as well as oral evidence. In the event of establishing a prima facie case, there could be no embargo for the Lower Court to add even at the final decree stage, those properties and delete certain properties...."

12. Hence, the review applicants are at liberty to seek to include the properties alleged to have been left out by the plaintiff. However, the plaintiff is entitled to contend and prove that the additional properties are not available for partition.

13.With the above observations, the review application is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

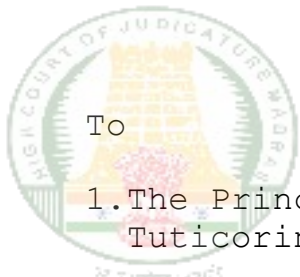
Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

msa



To

1.The Principal District Judge,
Tuticorin.

2.The Subordinate Judge,
Tuticorin.

Copy to:

The Section Officer,V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-3890[F] dated 03/02/2022)

+1 CC to M/s.AJMAL ASSOCIATES,Advocate(SR-3895[F] dated
03/02/2022)

+1 CC to M/s.R.BALAKRISHNAN, Advocate(SR-4598[F] dated 07/02/2022)

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in

S.A.No.178 of 2006

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MP(MD).No.1 of 2013

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MGJ(17.02.2022) 5P 8C