

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:30.3.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

Review Application No.325 of 2015

Kani Ammal (Deceased)

1.S. Jayaseelan

(2nd Appellant brought on record
as legal heir of the deceased sole
appellant by the order of the Court)

..Review Petitioner/2nd Appellant

Versus

1.Tamil Nadu Slum Clearance Board
represented by its Chairman
Madras-105.

2.C.A.Khaja Mohideen

3.The Tamil Nadu Wakf Board
represented by its Secretary
Madras-4.

..Respondents

Prayer: Review application is filed to review the Judgment and Decree passed by K.B.K. Vasuki, J., in the Second Appeal in S.A.No.1375 of 1993, dated 16.7.2015 which was filed against the Judgement and Decree in the Appeal Suit in A.S.No.97 of 1991, dated 2.7.1993 on the file of the V Additional Judge, City Civil Court, Chennai, reversing the Judgment and Decree, dated 24.4.1989 and made in O.S.No.322 of 1997 on the file of the II Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.S.V. Jayaraman, Senior Counsel
for M/s. V. Ravi

For Respondent No.1: Mr.P.H. Arvind Pandian, AAG
for Mr. S. Prabhu

For Respondent No.2 : No Appearance

For Respondent No.3 : Mr.S. Mohamed Fayaz Ali

O R D E R

Invoking the provisions of Order 47 Rule 1 read with Section 114 of C.P.C., this review application is filed seeking to review the judgment and decree, dated 16.7.2015 and made in the second appeal in S.A.No.1375 of 1993 on the file of this Court.

2. The second appeal in S.A.No.1375 of 1993 was filed against the judgment and decree, dated 2.7.1993 and made in the appeal in A.S.No.97 of 1991 on the file of the learned V Additional Judge, City Civil Court, Chennai reversing the judgment and decree, dated 24.4.1989 and made in the suit in O.S.NO.322 of 1977 on the file of the II Assistant Judge, City Civil Court, Chennai.

a. Originally, the suit in O.S.No.322 of 1997 was filed by one Nallaya Nadar as against the respondents seeking the relief of declaration to declare that he had perfected title by adverse possession over the suit property bearing Door No. 10/2 Old No.7, Mosque Street, Mylapore, Madras and for the consequential relief of permanent injunction.

b. During the pendency of the suit, the plaintiff Nallaya Nadar had passed away. Therefore, his wife Kaniammal was brought on record as his Legal

Representative.

c.Despite the contest made by the defendants, the suit was decreed on 24.4.1989 as prayed for.

3. Challenging the judgment and decree of the trial Court, the first respondent had preferred an appeal in A.S.No.97 of 1991 on the file of the learned V Additional Judge, City Civil Court, Chennai, which was allowed on 2.7.1993. The judgment and decree of the trial Court were set aside in respect of the first respondent herein, viz., Tamil Nadu Slum Clearance Board representing by its Chairman, Madras-5.

4. Having been aggrieved by the judgment of the first appellate Court, the plaintiff Kaniammal had preferred the second appeal before this Court in S.A.No.1375 of 1993.

5. During the pendency of the second appeal Kaniammal had passed away. Therefore, the present review applicant S. Jayaseelan was brought on record as the legal representative of the deceased Kaniammal in view of the order, dated 25.4.2012 passed by this Court in C.M.P.No.9387 of 2006.

6. The case of the original plaintiff C.Nallaya Nadar is that he had occupied the suit property measuring 600 sq.ft. as early as in the year 1957 by putting up a shed with Zinc sheets and fenced with Bamboo stick and he had been using the remaining extent for storing the fire wood charcoal etc. He had been running the charcoal and firewood business

after obtaining requisite license from the Corporation of Chennai.

7. His possession and enjoyment of the suit property was adverse to the knowledge of the true owners and in his own right he had been enjoying the property for more than the statutory period and as such he had perfected title by adverse possession.

8. He had received a notice under Ex.A22, dated 11.11.1976 from the first respondent, Tamil Nadu Slum Clearance Board calling upon him to remove the superstructure put up by him in the suit property.

9. According to the plaintiff Nallaya Nadar, he was not bound to surrender the vacant possession as demanded by the first defendant Tamil Nadu Slum Clearance Board under Ex.A.22, dated 11.11.1976 as he had perfected title over the suit property by adverse possession.

10. The contention of the first respondent is that the suit property forming part of large extent in Mosque Street was originally belonged to one C.A.Khaja Mohideen Sahib (D2), who had subsequently given his consent to the Tamil Nadu Slum Clearance Board to acquire the land for constructing the tenements for the slum people and also authorised the Slum Clearance Board Authorities to enter into the land to proceed with the construction work.

11. It is also the case of the first respondent that the said area was declared as slum area by way

of Notification, dated 12.4.1972 under Section 3(1) of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 (hereinafter it may be referred in short as "Act") and a scheme called "Mosque Street Slum Clearance Scheme" was formulated in the area and the Slum Clearance Board had also approved the proposal to construct 112 numbers of multi storey tenements with the financial assistance of HUDCO by G.O.Ms.No.54, dated 5.2.1977 (Ex.B.3) and the plaintiff was also given a sum of Rs.50/- as an ex-gratia payment for temporary rehabilitation for removing his hut.

12. When the construction work was about to commence, the suit came to be filed by the plaintiff. Thereafter, further proceedings were initiated by issuing draft notification under Section 17(1) of the Act for declaring the same as slum clearance area and that the plaintiff without challenging the notification under Section 3(1) of the Act cannot make any claim over the property after receiving the ex-gratia payment of Rs.50/-.

13. The second appeal came to be admitted on the following two substantial questions of law:-

a. Whether the lower appellate court committed material error in law in holding that the suit itself is not maintainable under Section 65 of the Act (11 of 1971) in the light of decision reported in 1980 (2) MLJ 89 and on the facts and circumstances of this case?

b. When the first respondent has not filed the notification under Section 17(1) of the Act (11 of 1971) (G.O.Ms.No.1391 Housing and Urban Development Department, dated 26.7.1979) in the Court and exhibited the same, whether the lower appellate court is correct in law in presuming that the suit property is also included in the said notification and allowing the appeal on that basis?

14. After hearing both sides, the learned Judge of this Court, had dismissed the second appeal on 16.7.2015 with the liberty to the first respondent, viz., Tamil Nadu Slum Clearance Board to initiate appropriate action under the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 by issuing a fresh notice to the legal heirs of the original occupant and to proceed with the same in the manner known to law after giving them due opportunity of personal hearing.

15. According to Mr.S.V. Jayaraman, learned Senior Counsel, the specific observation made by the learned Judge of this Court had accelerated the appellant to file this review application as contemplated under the provisions of Order 47 Rule 1 C.P.C.

16. The learned Senior Counsel Mr. S.V.Jayaraman, has articulated his argument on the following three grounds to review the judgment of this Court, dated 16.7.2015.

a. Section 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 (Act 11 of 1971) is similar to Section 16-A of Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1960 (Act X of 1969) and the non consideration of the Full Bench decision in ***Periathambi Goundan vs. The District Revenue Officer, Coimbatore and others*** (1980 (2) MLJ 89 : AIR 1980 Madras 180(1)) on the maintainability of a civil suit relating to some matters of questions, which had to be determined, outside the jurisdiction of the authorities under the Act, by a civil court.

b. The first respondent has failed to produce the notification under Section 17(1) of the Act (Act 11 of 1971) before the trial Court and that the presumption of the first appellate Court regarding the properties involved in the said notification is also unlawful.

c. The substantial questions of law formulated at the time of admission of the second appeal have not been decided and answered when the second appeal was disposed of. 16a.

Besides this, the learned Senior Counsel has invited the attention of this court to the observation made by the learned Judge in the operative portion of the Second Appeal and with reference to this, he has contended that from the observation made by the learned Judge, it is clear that the following two lacunae are identified

which, according to Mr.S.V. Jayaraman, necessitated the petitioner to file this petition to review the Judgment of this Court. 16b. It gives presumption that no proper action as required under the provisions of the Act was initiated by the first respondent prior to the institution of the suit.

16c. The statutory Notification under Section 17(1) of the Act (11 of 1971) was not issued and the non-issuance of such Notification would lead to presume that the suit property was not included in the Scheme.

16d. The learned Senior Counsel has also pointed out that, as afore stated, no notice was earlier issued and that was why, the learned Judge while dismissing the second appeal on 16.7.2015, has specifically given the liberty to the first respondent, viz., Tamil Nadu Slum Clearance Board to initiate appropriate action under the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 by issuing a fresh notice to the legal heirs of the original occupant and to proceed with the same in the manner known to law.

17. With reference to the maintainability of the suit before the civil court, as the provisions of Section 65 of the Act operate as a bar, the learned Senior Counsel has taken umbrage of the Full Bench decision of this Court in ***Periathambi Goundan vs. The District Revenue Officer, Coimbatore and others (1980 (2)***

MLJ 89 : AIR 1980 Madras 180(1)).

18a. It is imperative on the part of this Court to make reference to the provisions of Section 65 of the Act as well as the provisions of Section 16-A of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 (Act 10 of 1969).

18. The provisions of Section 16-A of the Tamil Nadu Agricultural Lands Record of Tenancy Rights, Act 1969 (Act X of 1969), is said to be pari materia to the provisions of Section 65 of the Act. Section 65 of the Act is extracted as under:-

"65. Bar of Jurisdiction of Civil Court:- Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Government are, or the prescribed authority is empowered by or under this Act, to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

19. Section 65 of the Act explains that where the Government are, or the prescribed authority is, empowered by or under this Act to determine any matter, no civil court shall have jurisdiction to entertain the suit and no injunction shall also be granted in respect of any action taken or to be taken in pursuance of any powers conferred by or under this Act, save, as otherwise expressly provided under this Act.

20. As pointed out by the learned Senior

Counsel, as nearly as five documents were exhibited before the trial Court on behalf of the first respondent. However, no Notification under Section 17(1) of the Act (11 of 1971) was produced and exhibited before the trial Court.

21. This has not been denied by the learned Additional Advocate General, who has argued on behalf of the first respondent, Tamil Nadu Slum Clearance Board.

22. As per the plaint Schedule, the suit property has been described as under:-

"House, ground and premises bearing door No.10/2 (Old door No.7) Mosque Street, Mylapore, Madras, bounded on the North by Ponnammal's property, on the South by passage leading to Mosque Street, measuring North to South 60' and east to west 40 feet, situate within the Sub Registration District of Mylapore, and Registration District of Madras."

22a. Ex.B.1 is the Government Order in G.O.Ms.No.429 (Housing), Labour Department, dated 14.3.1972. This is the notification issued under sub-section 1 of Section 3 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, in respect of Mosque Street, Slum, comprised in S.No.3092 of Mylapore Village. In this Notification, the total extent is shown as 19 grounds and 321 sq.ft.

23. As argued by Mr.S.V. Jayaraman, learned Senior Counsel, no reference is available to show as to whether the suit property was also included in the

above said Scheme.

24. Ex.B3 is also the Government Order in G.O.Ms.No.54, Housing Department, dated 5.2.1977 with regard to the sanction of loan of Rs.292.61 lakhs by HUDCO to Tamil Nadu Slum Clearance Board for execution of 16 slum clearance schemes in Madras City. It reveals that the proposal was approved and guarantee for execution was given by the Government of Tamil Nadu.

25. Chapter VI of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, contemplates Acquisition of Land. It encompasses Sections 17 to 28.

26. Section 17 envisages, "Power to acquire land". Sub-section (1) of Section 17 of the Act, indicates as under:-

"Where the Government are satisfied that, for the purpose of executing any work of improvement in relation to any slum area or any building in such area or for the purpose of re-developing any slum clearance area, or for the purpose of rehabilitating slum dwellers, it is necessary to acquire any land within, adjoining or surrounded by any such area or any other land not lying in such area, they may acquire the land by publishing in the Tamil Nadu Government Gazette, a notice to the effect that they have decided to acquire the land in pursuance of this section."

27. Sub-section 2 of Section 17 reads as under:-

"(2) Before publishing a notice under sub-section (1), the Collector, or any officer, authorised by the Government in this behalf shall call upon the owner or

any other person, who, in the opinion of the Collector or the officer so authorised, may be interested in such land, to show cause why it should not be acquired. The Collector or the officer shall, after considering the cause, if any, shown by the owner or other person interest in the land, make a report to the Government containing his recommendations on the causes so shown, for the decision of the Government. After considering such report, the Government may pass such orders as they deem fit."

28. Section 17(1) makes it clear that prior to the acquisition of land, the authorities concerned have to publish a notice in the Tamil Nadu Government Gazette, to the effect that they have decided to acquire the land in pursuance of this section.

29. Sub-section 2 makes it obligatory on the Government that the Collector or any other officer authorised by the Government in this behalf shall call upon the owner or any other person to show cause as to why the land should not be acquired. The Collector or the officer concerned, after considering the cause, if any, shown by the owner shall make a report to the Government containing his recommendations. After considering such report, the Government may pass orders as they deem fit.

30. It is mandatory on the part of the Government as per sub-section 2 of Section 17 of the Act to call upon the owners of the land to show cause as to why their land should not be acquired.

31. The first respondent in their additional

written statement has stated that the Board has proposed to declare the said area to be the slum clearance area under section 11(1) of the Act to the Government and the Government have also declared the area as Slum Clearance Area under Section 11(1) of the Act. But no such declaration has been produced before the trial Court to show that the first respondent, Slum Clearance Board has complied with the requirements of sub-section 1 of Section 11 of the Act.

32. On perusal of the additional written statement filed by the first respondent, this Court finds that in Paragraph No.6, they have stated that on 25th October, 1979, a notice was issued under Section 17 of the Act to all the interested person including Thiru.C. Nallaiya Nadar, calling for the objections, if any, within the stipulated time, i.e., on or before 25th October, 1979.

33. In the same paragraph, they have stated that the Government have accepted the recommendations of the Collector of Madras and approved the Notification under Section 17(1) of the Act (11 of 1971) by G.O.Ms.No.1391, Housing and Urban Development Department, dated 26th July 1979.

34. But as contended by the learned Senior Counsel, the first respondent has not evinced any interest to produce the said Notification under Section 17(1) of the Act (11 of 1971) (G.O.Ms.No.1391, Housing and Urban Development Department), dated

26.7.1979, before the trial Court.

35. The non production of the above said Notification under Section 17(1) of the Act leads this court to draw an adverse inference as against the respondents.

36. In support of his contention, Mr.S.V. Jayaraman, has placed reliance upon the Full Bench decision of this Court in ***Periathambi Goundan vs. The District Revenue Officer, Coimbatore (AIR 1980 MADRAS 180(1))***.

37. In this case, a petition was filed under Article 226 of the Constitution of India, praying for the issue of a writ of certiorari or any other appropriate writ, order or direction calling for the records in B.P.No.7 of 1975 on the file of the first respondent therein, namely, the District Revenue Officer, Coimbatore and quash the order, dated 22.11.1975.

38. One of the questions involved in the said writ petition was that the scope and effect of the provisions of Section 16-A of the Tamil Nadu Agricultural Land Record of Tenancy Rights Act (10 of 1969), which was introduced by the Tamil Nadu Agricultural Land Record of Tenancy Rights (Amendment) Act 1972 (Tamil Nadu Act 34 of 1972) with effect from 27.11.1972.

39. As per the provisions of Section 16-A of Tamil Nadu Agricultural Land Record of Tenancy Rights Act

(10 of 1969) as inserted in 1972), the jurisdiction of civil court is expressly excluded to determine whether a particular person is a cultivating tenant or not. But the bar imposed by Section 16-A does not apply to suits instituted prior to coming into force of that Section.

40. From the observations made by the Full Bench of this Court, it is thus explicit that Section 16-A of the Tamil Nadu Agricultural Land Record of Tenancy Rights Act (10 of 1969) came into force or introduced to the said Act after the institution of the above suit and therefore, it is not in any way affect the jurisdiction of the Civil Court in respect of suits or proceedings validly instituted before the coming into force of the said Section and pending on the date when the said Section came into force.

41. It may be appropriate to extract the observations made by the Full Bench, which reads as under:-

"However, Sec. 16A did not in any way affect the jurisdiction of the Civil Court in respect of suits or proceedings validly instituted before the coming into force of the said Section and pending on the date when the said Section came into force, whether in the original court or in the appellate or revision court. S.16-A was not intended to and could not affect any suit instituted prior to its introduction, even when the suit was in respect of a matter covered by Section 16 A. A suit which has been instituted prior to the coming into force of Sec.16-A of the Act will have to run its natural and normal course prescribed by law without in any

way being affected by the provisions contained in Section 16-A, because there is nothing in Section 16-A expressly or by necessary implication taking away the jurisdiction of the Civil Court validly and competently assumed at the first instance. Consequently, even if a decree had not been passed in a suit at the time when Sec. 16-A came into force, the fact that Sec. 16-A came into force during the pendency of the suit will not prevent the court from exercising its jurisdiction lawfully and validly invoked and the same principle will apply to the further course of the suit in the form of appeal or revision AIR 1976 Mad 287, Overruled; 1977-1 Mad LJ 189 and AIR 1977 Mad 402, Approved."

42. With regard to bar of jurisdiction of civil court, ambit, amplitude and extent of interdict imposed by Section 16-A, the Full Bench has also observed as under:-

"Two things are clear from the language of S.16-A. One is, the interdict is on jurisdiction of the matters which by or under the Act have to be determined by the Record Officer, the District Collector or other officer or authority empowered by the Act. The Section itself does not enumerate as to what those matters are. The second is, the interdict is not on any particular proceeding in the Civil Court, but only on the exercise of the jurisdiction in respect of matters. Controversies that come before a court or a tribunal cannot be either pigeon-hole or put in strait jackets. They may be of different varieties as well as different standards. For the purpose of deciding the main controversy, the court or the Tribunal may have incidentally to decide a number of subsidiary questions or controversies. Therefore, when the Section itself does not enumerate the matters in respect of which the jurisdiction of the Civil Court is ousted, one will have to

ascertain the said matters, with reference to the other provisions of the Act conferring power or jurisdiction on the authorities functioning under the Act. Similarly, a suit or proceeding in a Civil Court may involve the determination of several matters, some of which may be within the jurisdiction of the authorities functioning under the Act and some others outside the jurisdiction. In such a case, the suit or proceeding as such cannot fail unless it is of such a nature that it can be terminated solely on the determination of the matter falling within the jurisdiction of the authorities functioning under the Act."

43. The next one is authoritative prohibition, which is not on any particular proceeding in the civil court. But as observed by the Full Bench, only on the exercise of the jurisdiction in respect of matters. The controversies that come before the civil court or a tribunal cannot be either pigeon-hole or put in strait jackets. The disputes may be of different varieties as well as different standards. Therefore, the suit or proceeding in a civil court may involve the determination of several matters, some of which may be within the jurisdiction of the authorities functioning under the Act and some others may be outside the jurisdiction. In such a case, the suit or proceeding as such cannot fail unless it is of such a nature that can be terminated solely on the determination of the matter falling within the jurisdiction of the authorities functioning under the Act as laid down by the Full Bench of this Court.

43a. It is significant to note here that as held by the Full Bench in the above cited decision, the matters which are to be determined by the Government or the prescribed authority have not been detailed or enumerated in Section 65 of the Act.

44. In the absence of clarity as to what matters have to be particularly determined by the Government or by the prescribed authority, it cannot in wholesale be stated that the jurisdiction of the civil court is ousted.

45. As argued by the learned Senior Counsel, though the first respondent has claimed that the Notification under Section 17(1) of the Act was published in the Tamil Nadu Government Gazette by G.O.Ms.No.1391, Housing and Urban Development, dated 26/7/1979, a copy of such notification was not produced and exhibited before the trial court as one of the documents on their behalf.

46. The learned Senior Counsel in support of his contention, has also placed reliance upon the decision of this Court in ***Kasi and others vs. (1) Government of Tamil Nadu represented by Secretary, Labour Department and Chairman, Tamil Nadu Slum Clearance Board, Madras (1997 (38) L.W.560).***

47. In this case, a Division Bench of this Court has held as under:-

"6. It is clear from the above provision that there must be a

notification declaring a particular area as a slum area under S.3 and as per S.11, there must be a declaration that such area comes under the slum clearance area. Neither of these things has been done in this case, before the Slum Clearance Board launched its coercive proceedings to evict the appellants herein. No provision in the Act has been shown to us as to how such proceedings are taken by the second respondent herein. Even assuming that the second respondent has power to evict the appellants under Act 11 of 1971, on account of the failure on the part of the second respondent to declare the area as a slum area, and the further failure to declare such area as a slum clearance area, the action taken by the second respondent to clear the appellants from the area cannot be sustained. These declarations, in our view, are mandatory in nature and the failure to adhere to the procedure prescribed vitiates all the proceedings taken by the second respondent to evict the appellants. It is always open to the second respondent to follow the procedure strictly set up by the Act before taking action to clear the appellants from the tenements in which they are residing."

48. With regard to the maintainability of the review petition, the learned Senior Counsel has made reference to the decision of the Apex Court in **Amarjit Kaur vs. Harbhajan Singh and another ((2003)10 SCC 228)**.

49. In this case, the respondent husband had filed a petition under Section 13 of the Hindu Marriage Act before the District Judge seeking dissolution of the marriage by grant of decree for divorce on the grounds of alleged adultery and cruelty.

50. During pendency of the petition for trial,

the appellant wife filed an application under Section 24 of the Act claiming maintenance for a sum of Rs.3000 per month for herself and Rs.1000 per month each for a minor daughter and a minor son residing with her. The trial Court rejected the claim for interim maintenance. On a revision, the learned Single Judge of the High Court though accepted the wife's claim and also directed the husband to pay Rs.2000 by way of litigation expenses to the wife and further pay Rs.2000 per month by way of maintenance from the date of the application but it observed that during the course of the submissions it was suggested to the wife whether she was willing to get DNA test of the male child.

51. Being aggrieved with this observation, the wife had moved a review application and sought to bring to the notice of the Court the decision in ***Goutam Kundu vs. State of West Bengal (1993) 3 SCC 418***. But the learned Single Judge of the High Court by a cryptic order rejected the review petition with costs.

52. With regard to the provisions of Order 47 Rules 1 and 4 in respect of summary dismissal of review petition, the Apex Court has held that although a relevant Judgment of the Apex Court was cited, the procedure, thus, adopted by the High Court does not appear to be either just or reasonable or in conformity with the principles of law laid down by this Court and consequently the order is liable to be set aside.

53. The Apex Court has also observed that the order passed rejecting the review application summarily despite the fact that a judgment of the Supreme Court relevant for the purpose has been brought to the notice of the Court, without even expressing any view on the matter, by itself, is sufficient to set aside the order made on the review petition.

54. In an unreported decision of this Court, decided on 22.7.2014 between **V.Meiyappan vs. A. Priya in Review Petition No.23 of 2014 in C.R.P. (PD) No.3924 of 2013**, this Court in paragraph No.29 has observed that the scope of an application of review is much more restricted than that of an appeal. The Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used in Order 47 Rule 1. As observed in **Moran Mar vs. Mar Poulouse (AIR 1954 SC 526)**, the review petition can be allowed on the following three specified grounds:-

a.discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or order was made;

b. mistake or error apparent on the face of the record; or

c.for any other sufficient reason.

55. On the other hand, Mr.P.H.Arvind Pandian,

learned Additional Advocate General, has submitted that the second appeal was rightly dismissed on merit after considering the grounds of memorandum of second appeal, which did not require the intervention of this Court under the guise of review. 56. He

has also argued that if at all the petitioner wanted to challenge the second appeal, the only option available was to prefer an appeal before the Supreme Court and that this Court, being an appellate Court cannot review its own judgment and therefore, he has urged to dismiss the review petition. 57. The learned

Additional Advocate General has also drawn the attention of this Court to page No.21 of the plaint, wherein, the plaintiff Nallaya Nadar has claimed that since 1957 till this date, the first plaintiff has been in exclusive possession and enjoyment of the said property and running the said business all these 20 years without recognising anybody as the owner of the said property.

58. He has also stated that he has been in possession and enjoyment of the property in his own right and he had obtained the requisite licence from the Corporation of Madras as early as 28.8.1958.

59. In the same paragraph, he has also stated that as regards the business he has been paying sales tax to the authorities concerned for well over 12 years. He has also been paying professional tax for over 18 years. Thus the plaintiff has been in open notorious and exclusive possession and enjoyment of the property more

fully described in the schedule thereto in his own right and has therefore, perfected title by adverse possession even as against the real owner. 60.

It is pertinent to note here that the plaintiff has marked as nearly as 60 documents. It is significant to note here that the trial Court after scrutinising the evidences both oral and documentary had decreed the suit as prayed for. But the first appellate court had reversed the judgment of the trial Court. Hence, the second appeal was filed by the plaintiff.

61.Mr.P.H.Arvind Pandian, learned Additional Advocate General, in support of his contention, has placed reliance upon the following two decisions:-

a.Gurudwara Sahib vs. Gram Panchayat Village Sirthala and another ((2014) 1 SCC 669). 62.

In this case, the Apex Court in paragraphs Nos.7 and 8, has observed as under:- "7. In the second

appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable.

8. There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to that effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the

appellant is arrayed as defendant that it can use this adverse possession as a shield/defence".

b. R. Riyaz Ahmed vs. J.G. Glass Industries Pvt. Ltd. (2014 (3) CTC 146). 63. In

this case, a learned Single Judge of this Court, with regard to adverse possession has observed that plea of adverse possession can be raised only as a defence and it can be used as shield and not as a sword.

64. In this connection, this Court would like to point out that the suit was originally filed against the first defendant, viz., Tamil Nadu Slum Clearance Board as it caused a notice, dated 11.11.1976 to be served on the deceased first plaintiff calling upon him to vacate his firewood business premises within a period of one week from the date of receipt of a copy of the notice.

65. In fact, this notice under Ex.A22 had given the plaintiff a cause of action to file the above suit. Obviously, during the pendency of the suit, the defendants 2 and 3 were impleaded in view of the order passed in the interlocutory application in I.A.NO.21972 of 1984.

66. The second defendant, according to the plaintiff, claiming himself as Muthavalli of a particular wakf, had authorised the first defendant to take possession of the suit land and the first defendant Slum Clearance Board had also claimed that the suit property

is belonged to a particular wakf. The third defendant, viz., Tamil Nadu Wakf Board, is also a statutory body represented by its Secretary.

67. It may also be relevant to note here that since the first defendant had claimed that the suit property is belonging to a wakf, the plaintiff was constrained to implead the second and third respondents for the effective adjudication of the suit.

68. It is also to be noted that since the first defendant Slum Clearance Board under Ex.A22 had issued a notice calling upon the first plaintiff to vacate the shopping premises within a period of one week, it was necessitated for him to retain his possession and therefore, he had come forward with the suit seeking declaratory decree in his favour as he had perfected title by adverse possession over the suit premises bearing Door No.10/2 (old No.7) Mosque Street, Mylapore, Madras.

69. It is also to be highlighted that neither the second defendant nor the third defendant had raised any objection against the possession of the deceased first plaintiff.

70. It is the specific contention of the deceased first plaintiff that he came into occupation of the suit property as early as in the year 1957. From 1957 till the date of filing of suit, the deceased first plaintiff had been in exclusive possession and enjoyment of the suit property by running his firewood

business without recognising anybody as the owner of the suit property.

71. Further, he has claimed that he had been in possession and enjoyment of the said property in his own right. He had also obtained requisite licence from the Corporation of Madras for running charcoal and firewood business as early as on 28.8.1958. This fact has not been denied either by the first defendant Slum Clearance Board or by the defendants 2 and 3.

72. With regard to maintainability the relief of declaration in respect of adverse possession, this Court is of view that the above cited two decisions are not made applicable. The deceased first plaintiff had never claimed that he is the absolute and exclusive owner of the suit property. He has only claimed that he had perfected the title over the suit property by way of long, continuous and uninterrupted possession.

73. As afore stated, though the defendants 2 and 3 claimed to have rights and title (whatever may be) over the suit property, they never came forward to establish their title or right within the statutory period of 12 years as prescribed under Article 64 of the Limitation Act, 1963.

74. Having slept over for the past several years, i.e., more than the statutory period, even if it is presumed that they were having right or interest over that property, the same is extinguished by efflux of time.

75. This Court finds that even till today, the second plaintiff, who is the legal representative of the deceased first plaintiff continued to be in possession of the suit property.

76. In so far as this suit is concerned, the trial Court had totally formulated four issues and two additional issues. The additional issue No.1 is more relevant to the prayer 'A' portion, i.e., with reference to the relief of declaration to declare that the deceased first plaintiff had perfected title by adverse possession of the suit property bearing Door No.10/2 (old No.7) Mosque street, Mylapore, Madras.

77. The first defendant/Slum Clearance Board alone had contested the suit. The second defendant had not contested the suit as he remained ex parte. Though the third defendant Tamil Nadu Wakf Board was appearing through their counsel, they had not chosen to file their written statement, objecting the claim of the deceased first plaintiff.

78. The first defendant/Slum Clearance Board in their written statement have stated that the land comprised in R.S.No.3092 of Mylapore Village measuring 19 grounds 321 sq.ft. situate in Mosque Street, originally belonged to the second defendant C.A.Khaja Mohideen and the said C.A.Khaja Mohideen had given his consent as early as on 30.9.1975 and 24.2.1976 to acquire the land for constructing the tenements for the slum people and also authorised the slum clearance board

authorities to take possession of the land and proceed with the construction work.

79. According to the first defendant, the said Khaja Mohideen had transferred the above said land to the first defendant/Slum Clearance Board. But the first defendant had never raised his specific plea with regard to the maintainability of the prayer 'A' portion to declare that the deceased first plaintiff had perfected title by way of adverse possession over the suit property.

80. Firstly, the long and uninterrupted possession of the deceased deceased first plaintiff over the suit property right from the year 1957 has not been denied by the first defendant. It is settled position of law that in the absence of specific plea, no amount of evidence could be considered.

81. Further, as afore stated, the trial Court for the first additional issue with regard to the declaratory relief had found, placing reliance upon the decision reported in ***Kuppusamy Naidu and others vs. Kuppusamy Naidu (1941 L.W.502) and Pavadai alias Selvaraj Chettiar vs. Chinnadurai Padayachi and others (1993 L.W. 278)*** that since the deceased first plaintiff had been in possession and enjoyment of the property adverse to the right of the real owner from 1957, he had perfected title over the suit property by adverse possession. Only based on this finding, the trial Court

had granted declaratory relief.

82. As argued by Mr.S.V.Jayaraman, learned Senior Counsel appearing for the review petitioner, the suit itself is peculiar in nature. Even in the grounds of first appeal, the first defendant/Slum Clearance Board had never raised any ground with regard to the maintainability of the prayer 'A' portion, i.e., declaration of title prescribed by way of adverse possession.

83. The lower appellate court has also formulated only one point with regard to the entitlement of the plaintiff to get the relief of permanent injunction. The lower appellate Court has not gone into the question of entitlement of the plaintiff to maintain the prayer of declaration in respect of adverse possession.

84. What the Rule 24 of Order 41 of C.P.C. envisages is that whether the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

85. In so far as the review petition is concerned, this Court is of considered view that even before the first appellate court, the first

defendant/Slum Clearance Board had never raised the issue of maintainability of the prayer 'a' portion relating to declaration in respect of prescription of title by adverse possession over the suit property. Since the lower appellate court has based its findings only on the relief of permanent injunction, the finding of the trial court with regard to the declaratory relief in respect of adverse possession has become final. Though the decree of trial court is binding upon the defendants 2 and 3, they never preferred any appeal. In fact, though the second defendant is said to be the owner of the property, even prior to the transferring of the entire extent measuring 19 grounds and 321 sq.ft. comprised in R.S.No.1392, the deceased first plaintiff Nallaya Nadar had been in continuous possession for more than the statutory period. 86.

This Court, again, takes the risk of repetition of the arguments advanced by Mr.P.H.Arvind Pandian, learned Additional Advocate General, with regard to the maintainability of the suit in respect of the prayer of declaration to declare that the plaintiff has perfected title by adverse possession over the suit property.

87. It is, therefore, imperative on the part of this Court to extract prayer portion 'a' of the plaint, which reads as under:-

"The plaintiff, therefore, prays for a decree:-

a. declaring that the plaintiff has perfected title by adverse possession of the property bearing

Door No.10/2 (old No.7) Mosque Street, Mylapore, Madras, morefully set out in the schedule hereto;"

88. In this connection, this Court also finds that it may be more relevant to have reference to the decision of the Apex Court in ***Des Raj and others vs. Bhagat Ram (Dead) by Lrs. and others, decided by the Division Bench of the Apex Court on 20.2.2007 in Appeal (Civil) No.5846 of 2000.***

89. In this case, the defendants in the suit were appellants before the Apex Court. The parties to the suit were co-owners. The plaintiff/respondent continued to possess the properties situate at Samleu. The respondent/plaintiff had filed a suit in the year 1986 for declaration of his title and permanent injunction.

90. In paragraph No.8 of the plaint, the plea of adverse possession was raised, which reads as under:-

"The plaintiff has been in possession as owner in adverse possession on the land of the defendant No. 1 to 12, area 155 Bigha 0 Biswa of the land for 12 years. Hence it is appropriate to declare the possession and ownership by way of adverse possession of the plaintiff on the land in disputed land and the defendant Nos. 1 to 22 are intending to alienate the land on the basis of mere entry in the papers. Therefore, it is proper to restrain the defendant Nos. 1 to 22 from selling, leasing out and transferring the land by any means."

91. The trial Court based on the pleadings of the parties had framed three issues. Of which, the first one is, "Whether the plaintiff has become the owner of

the suit property by adverse possession as alleged?"

92. By reason of a judgment and decree dated 9.10.1987, the learned Trial Judge opined that the plaintiff had been in exclusive continuous peaceful possession of the suit land to the exclusion of the other co-owners prior to settlement which took place in the year 1953.

93. The trial Court after analysing the evidences brought on record had also found that, "it is thus evident that Bhagat Ram had been making open assertion of his hostile title coupled with exclusive possession and enjoyment to the knowledge of other co-owners which is essential for adverse possession against co-owners as held in ***Krishan and others, Appellants vs. Krishanoo and others Respondents AIR 1985 H.P. 103***"

94. It had been categorically held that assertion of exclusive possession by the plaintiff was clear and explicit and the defendants appellants had actual knowledge thereof.

95. The first appellate court had dismissed the appeal preferred by the defendants/appellants.

96. In the second appeal preferred by the defendants/appellants, the High Court while determining the same opined as under:-

"In the present case, the plaintiff has specifically pleaded that he is in continuous possession of the land in dispute in open and unequivocal denial of title of defendants No. 1 to 22-A, since prior to 1952-53. As stated above, the

longstanding revenue entries since 1952-53 record the plaintiff to be in exclusive possession of the land in dispute".

97. Before the Supreme Court of India, Mr. R.K. Dash, learned senior counsel appearing on behalf of the appellants, had submitted that the parties hereto being co-sharers, it was obligatory on the part of the plaintiff to plead and prove ouster. According to the learned senior counsel, the learned Trial Judge as also the Appellate Courts committed a manifest error in arriving at the conclusion that the plaintiff perfected his title by adverse possession.

98. Mr. E.C. Agrawala, learned counsel appearing on behalf of the respondents, on the other hand, supported the impugned judgments.

99. After striking a balance between the submissions made on behalf of both sides, the Division Bench of the Apex Court has observed that, "we have noticed hereinbefore the factual aspects of the matter which are neither denied nor disputed. Admittedly, the plaintiff respondent had remained in possession for a long time i.e. since 1953.

100. It may be true that in his plaint, the plaintiff did not specifically plead ouster but mufosil pleadings, as is well known, must be construed liberally. Pleadings must be construed as a whole.....Only because the parties did not use the terminology which they should have, ipso facto, would not mean that the ingredients for

satisfying the requirements of statute are absent. There cannot be any doubt whatsoever that having regard to the changes brought about by Articles 64 and 65 of the [Limitation Act](#), 1963 vis-a-vis Articles 142 and 144 of the [Limitation Act](#), 1908, **the onus to prove adverse possession would be on the person who raises such a plea.**

It is also furthermore not in dispute that the possession of a co-sharer is presumed to be possession of the other co-sharers unless contrary is proved.

101. A plea of adverse possession or a plea of ouster would indisputably be governed by Articles 64 and 65 of the [Limitation Act](#).

102. In a case of this nature, where long and continuous possession of the plaintiff-respondent stands admitted, the only question which arose for consideration by the courts below was as to whether the plaintiff had been in possession of the properties in hostile declaration of his title vis-a-vis his co-owners and they were in know thereof.

103. Mere assertion of title by itself may not be sufficient unless the plaintiff proves animus possidendi. But the intention on the part of the plaintiff to possess the properties in suit exclusively and not for and on behalf of other co-owners also is evident from the fact that the defendants appellants themselves had earlier filed two suits. Such suits were filed for partition. In those suits the defendants

appellants claimed themselves to be co-owners of the plaintiff. A bare perusal of the judgments of the courts below clearly demonstrates that the plaintiff had even therein asserted hostile title claiming ownership in himself. The claim of hostile title by the plaintiff over the suit land, therefore, was, thus, known to the appellants. They allowed the first suit to be dismissed in the year 1977. Another suit was filed in the year 1978 which again was dismissed in the year 1984. It may be true, as has been contended on behalf of the appellants before the courts below, that a co-owner can bring about successive suits for partition as the cause of action therefor would be continuous one. But, it is equally well-settled that pendency of a suit does not stop running of 'limitation'. The very fact that the defendants despite the purported entry made in the revenue settlement record of rights in the year 1953 allowed the plaintiff to possess the same exclusively and had not succeeded in their attempt to possess the properties in Village Samleu and/or otherwise enjoy the usufruct thereof, clearly go to show that even prior to institution of the said suit the plaintiff-respondent had been in hostile possession thereof.

104. Article 65 of the [Limitation Act](#), 1963, therefore, would in a case of this nature have its role to play, if not from 1953, but at least from 1968. If that be so, the finding of the High Court that the respondent perfected his title by adverse possession and

ouster cannot be said to be vitiated in law.

105. While speaking on behalf of the Division Bench of the Apex Court, Hon'ble Mr. Justice S.B.Sinha, has also observed that, "yet again in [T. Anjanappa and Others v. Somalingappa and Another](#) [(2006) 7 SCC 570], it was held:-

"12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property."

106. In this case, however, a finding of fact has been arrived at by all the three courts. They have analysed the evidences on record. They have taken into consideration the correct legal position operating in the field as also the conduct of the parties. They, in our opinion, applied the correct principles of law as regards 'burden of proof'.

107. Ultimately, His Lordship has observed that

having regard to the peculiar fact obtaining in the case, they are of the opinion that the plaintiff- respondent had established that he acquired title by ousting the defendants appellants by declaring hostile title in himself which was to the knowledge of his co-sharers.

108. Eventually, the appeal filed by the appellants/defendants was dismissed with a finding that there was no infirmity in the impugned judgments.

109. In the above cited case, the prayer of declaration in respect of the prescription of adverse possession over the suit property was held to be maintainable by the three courts, viz., the trial Court, first appellate court as well as by the High Court in the second appeal. Finally, it was confirmed by the Supreme Court. Under these circumstances, this Court finds that the arguments advanced by Mr.P.H.Arvind Pandian on the issue of maintainability of the prayer for declaration that the plaintiff has prescribed title over the suit property by way of adverse possession is not able to be countenanced and therefore, liable to be discarded.

110. Keeping in view of the above facts, as already observed in the foregoing paragraphs, the two decisions, viz., ***Gurudwara Sahib vs. Gram Panchayat Village Sirthala and another ((2014) 1 SCC 669), and R.Riyaz Ahmed vs. J.G. Glass Industries Pvt. Ltd. (2014 (3) CTC 146)*** are not made applicable, because the

continuous and uninterrupted possession of the deceased first plaintiff Nallaya Nadar right from the year 1957 till date is expressly or impliedly in denial of the title of the true owner, viz., the second defendant in the suit. The plaintiff has also firmly established by clear and unequivocal evidence that his possession is hostile to the real owner, viz., the second defendant as well as the third defendant.

111. The long and uninterrupted possession of the suit property by the deceased first plaintiff Nallaya Nadar is well-known to the second defendant, who is the real owner of the property.

112. Therefore, it is construed that the possession of the deceased first plaintiff Nallaya Nadar in respect of the suit property is adverse to the real owner, viz., the second defendant.

113. In so far as the present review petition is concerned, the second appeal was not dismissed on this ground. What the learned Senior Counsel would argue is that the statutory requirements as contemplated under Sections 11 and 17(1) and (2) of the Act have not been complied with in this case.

114. Further, as observed in the foregoing paragraphs, since Section 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 does not enumerate as to what matters have to be determined by

the Government or by the prescribed authorities, it cannot be stated that the jurisdiction of civil court is ousted as the interdict is not on any particular proceeding in the Civil Court, but only on the exercise of the jurisdiction in respect of matters.

114a. Accordingly, the substantial questions of law are answered in favour of the Review Petitioner/Appellant.

115. Viewing from any angle, this Court is of firm view that the review petition is well within the bounds of Order 47 Rule 1 C.P.C. as it satisfies the ingredients of the provisions envisaged therein.

116. In the result, the review petition is allowed. The Judgment of this Court, dated 16.7.2015 and made in the second appeal in S.A.No.1375 of 1993 is reviewed and set aside and the Second Appeal in S.A.No.1375 of 1993 is allowed. The judgment and decree, dated 2.7.1993 and made in A.S.No.97 of 1991 on the file of the V Additional Judge, City Civil Court, Chennai, are set aside. The Judgment and Decree, dated 24.4.1989 and made in O.S.No.322 of 1977 on the file of II Assistant Judge, City Civil Court, Chennai are restored. However, there will be no order as to costs.

rnb

30.3.2016

Index:Yes.

Internet:Yes.

To

1. The V Additional Judge, City Civil Court, Chennai.
2. The II Assistant Judge, City Civil Court, Chennai.

T. MATHIVANAN, J.

RNB

Order in

Review Application No.325 of 2015

DATE:30.3.2016

"16-A Bar of jurisdiction of civil courts

- No civil court shall have jurisdiction in respect of any matter which the record officer, the District Collector or other officer or authority empowered by or under this Act has to determine and no injunction shall be granted by any court in respect of any action taken or to be taken by such officer or authority in pursuance of any power conferred by or under this Act."