

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2016

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Rev.Appl.No.201 of 2015
and M.P.No.1 of 2015

K.R.Kirubakaran

.. Petitioner

v.

1.G.Lakshmi
2.The Chairman,
Tamil Nadu Slum Clearance Board
Kamaraj Road,
Chennai 600 005.

..Respondents

Prayer: Review Application is filed under XLVII Rule 1 read with 114 of C.P.C., against the Judgment and decree dated 01.07.2015 passed in S.A.No.271 of 2008 on the file of this Court.

For Petitioner	: Mr.S.Subbiah
For R1	: Mr.P.Paul Selvan

ORDER

The appellant in S.A.No.271 of 2008, who lost his legal battle in the three Courts viz., trial Court, first appellate Court and this Court, has preferred this Review Application, challenging the decree and judgment passed by this Court dated 01.07.2015, made in S.A.No.271 of 2008.

2.Learned counsel for the petitioner submits that the City Civil Court has no jurisdiction to entertain the suit, as per Section 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 (hereinafter called as “the Act”). He further submits that even though he has not raised a plea of bar of jurisdiction at the time of second appeal, the second defendant, who is none other than the Tamil Nadu Slum Clearance Board (hereinafter called as the “Board”) has raised such a plea, but it was not agitated. Hence, the appellant/petitioner wants to agitate the same by way of filing this review application. To substantiate his arguments, he relied upon the following decisions:

- (i) AIR 1971 SC 2018 (The State of Rajasthan v. Rao Raja Kalyan singh (dead) by his legal representatives);
- (ii) AIR 1961 Rajasthan 186 (Mst.Ayesha Bai and others v. Daleep singh);
- (iii) 2011 (1) SCC 356 (Laxmi Ram Pawar v. Sitabai Balu Dhotre and another);
- (iv) 2015 (4) CTC 159 (Ambika and another v. M.Shamshad and another);

3.It is further submitted that as per Section 29 of the Act, the plaintiff is not entitled to file the suit without obtaining prior permission from the Board. As per Section 57 of the Act, only prescribed authority alone can evict the occupant. It is further argued that even though the appellant/petitioner has

taken the plea of adverse possession, he has not putforth any arguments on that point. Hence he prays for review the judgment and decree passed in the second appeal.

4. Resisting the same, the learned counsel appearing for the first respondent/plaintiff would submit that the review application itself is not maintainable and to substantiate the same, he relied upon the decision of the Honourable Apex Court reported in (2013) 4 CTC 882 (Kamlesh Verma v. Mayawati and others) and (2006) 4 SCC 78 (Haridas Das v. Usha Rani Banik (SMT) and others). Since the petitioner, who is the first defendant in the suit, has not raised the plea of jurisdiction even at the time of trial, now he cannot raise such a plea at the time of review application. Furthermore, the appellant has lost his legal battle in all the three Courts. He would further submit that in para-5 of the written statement itself, the second defendant/Board stated that the dispute is between 1st defendant/brother and the plaintiff/sister, so Section 57 of the Act is not applicable to this case. It is also submitted that in respect of adverse possession, the appellant/petitioner herein has not advanced any argument and that it has to be negatived. So there is no error apparent on the face of the record. Thus, he prays for dismissal.

5.Considered the rival submissions made on both sides and perused the materials available on record.

6.It is seen from the records that the property in question is originally belong to the Board, the same has been allotted to the plaintiff/first respondent herein and she had also paid the amount to the second defendant/Board. The first defendant/petitioner herein is the elder brother of the plaintiff/first respondent. After taking possession of the suit property, she allowed the first defendant to stay along with her on the request made by him. Thereafter, the first defendant/petitioner taking advantage of the same, took possession of the suit property. Therefore, the plaintiff/first respondent gave a representation before the second respondent/Board to remove the first defendant from the suit property. Then, she has filed a suit for eviction after impleading the Board as the second defendant. After hearing both sides, the trial court decreed the suit against the first defendant/petitioner herein, against which, the first defendant has preferred the appeal and the same was also dismissed. Aggrieved against the same, the first defendant/petitioner has preferred the second appeal before this Court, which was also dismissed on 01.07.2015. Therefore, he has come forward with the review application.

7. According to the first respondent herein, the review application itself is not maintainable. Therefore, this Court has to decide whether review application is maintainable under Order XLVII Rule 1 C.P.C. and under what circumstance, the earlier judgment can be reviewed and whether any error apparent on the face of the record? Admittedly, the petitioner herein has not taken a plea that the Civil Court has no jurisdiction at the time of hearing the suit. Even though the second defendant raised the said plea, it was not agitated before the trial Court. But the petitioner herein now wants to raise the plea of bar of jurisdiction.

8. It is appropriate to consider the written statement filed by the second defendant/Board. In para-5, it was stated that the dispute is between the first defendant/brother and plaintiff/sister. In such circumstances, I am of the view that the review application itself is not maintainable. Furthermore, the petitioner has not put forth any new ground on this point.

9. At this juncture, it is appropriate to consider the following decisions relied upon by the learned counsel for the first respondent herein:

(i) In **(2006) 4 SCC 78 (Haridas Das v. Usha Rani Banik (SMT) and others)**, in para-12, it is held as follows:

“12. Order 47 Rule 1 reads as follows:

1. Application for review of judgment— (1) Any person considering himself aggrieved—

a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

b) by a decree or order from which no appeal is allowed, or

c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation—The fact that the decision on a question of law on which the judgment of the Court is based has been

reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]”

(ii) He relied on para-16 of the judgment reported in **(2013) 4 CTC 882 (Kamlesh Verma v. Mayawati and others)** and the same is extracted hereunder:

“Summary of the Principles:

16. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

(A) When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words “any other sufficient reason” has been interpreted in *Chhajju Ram v. Neki*, AIR 1922 PC 112, and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius & Ors.*, 1955 (1) SCR 520, to mean “a reason sufficient on grounds at least analogous to those specified in the Rule”. The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors.*, JT 2013(8) SC 275.

(B) When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous

decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the Appellate Court, it cannot be permitted to be advanced in the Review Petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

In the above decision, in 16(B)(iv)), it was specifically mentioned that the review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In B(v) also, it was specifically held that a review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error. Applying the dictum laid down in (2013) 4 CTC 882 (Kamlesh Verma v. Mayawati and others), I am of the view, the review application itself is not maintainable.

10. The learned counsel for the petitioner herein has also relied upon the following decisions:

(i) In ***AIR 1961 Rajasthan 186 (Mst. Ayesha Bai and others v. Daleep Singh)***, it was held that mere acquiescence on the part of the defendants will not cure the defect of lack of jurisdiction; but where there was no inherent

lack of jurisdiction in the High Court to entertain the appeal, objection on the ground of limitation and want of jurisdiction cannot be allowed to be agitated in a review after the appeal was heard on merits, findings arrived at and the case decided. In the decision relied upon by the learned counsel for the petitioner itself shows that once the appeal has been disposed of and that findings shall not be questioned by way of review in respect of jurisdiction. So I am of the view that the review application itself is not maintainable.

11. However, this Court has to consider the arguments advanced by the learned counsel for the petitioner and the following decisions relied upon by him:

(i) In ***AIR 1961 Rajasthan 186 (Mst. Ayesha Bai and others v. Daleep Singh)***, it was held that lack of jurisdiction cannot be raised during the review application, once the issue has been decided on merits.

(ii) In the decision reported in ***AIR 1971 SC 2018 (The State of Rajasthan v. Rao Raja Kalyan Singh (dead) by his legal representatives)***, the respondent raised the plea that the suit is not maintainable and that the claim made in the plaint is barred by limitation. But the above decision is not applicable to the facts of the present case, because it is not the case of the petitioner that he has raised a plea of jurisdiction at the time of trial. As

already stated that the plea of lack of jurisdiction shall not be raised at the time of review application. Furthermore, since the petitioner has not raised the said plea at the time of hearing the suit, he is not entitled to raise the plea at the time of review application. Therefore, this Review Application is dismissed on the sole ground itself.

(iii) In the decision reported in **2015 (4) CTC 159 (Ambika and another v. M.Shamshad and another)**, the decision of the Apex Court reported in **2011 (1) SCC 356 (Laxmi Ram Pawar v. Sitabai Balu Dhotre and another)** and **Section 29 of the Act** have been considered. It was held that Section 29 of the Act is a bar if no sanction is taken from the prescribed authority. So it is appropriate to extract Section 29 of the Act, which runs as follows:

“29.Proceedings for eviction of (occupants) not to be taken without permission of the prescribed authority:—(1) Notwithstanding anything contained in any other law for the being in force, no person shall except with the previous permission in writing of prescribed authority-

(a) institute, after the commencement of this Act any suit or proceedings for obtaining any decree or order for the eviction 1(an occupant) from any building or land in such area: or

(b) where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of (an occupant) from any building or land in such area, execute such decree or order.

(2) Every person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the prescribed authority in such form and containing such particulars as may be prescribed.

(3) On receipt of such application, the prescribed authority after giving an opportunity to the parties of being heard and after making such summary enquiry into the circumstances of the case as it thinks fit shall, by order in writing, either grant or refuse to grant such permission.

(4) In granting or refusing to grant permission under sub-section (3), the prescribed authority shall take into account the following factors, namely : -

a) whether alternative accommodation within the means of the 1(occupant) would be available to him if he were evicted:

(b) whether the eviction is in the interest of improvement and clearance of the slum area;

(c) such other factors, if any, as may be prescribed.

(5) Where the prescribed authority refuses to grant the permission, it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant.”

There is no quarrel over the above proposition.

12. In the case on hand, in para-5 of the written statement itself, the second respondent/Board admitted that the plaintiff/first respondent has given representation to evict the first defendant from the suit property and the same was not considered. Para-5 is extracted hereunder:

“5... .. the plaintiff herself admitted in her plaint that the first defendant who is the brother of the plaintiff and the plaintiff herself permitted first defendant to occupy the suit schedule property. In the above circumstances, it is not the responsibility of this defendant to evict the first defendant from the schedule property and further it is purely a family fraud, between a sister and her brother and this defendant is nothing to do with the family dispute between the sister and brother. Hence it is a personal problem of the plaintiff to evict the first defendant. ”

Under such circumstances, since the second defendant has not passed any order on the representation made by the plaintiff, she has filed the suit for the above stated relief. Therefore the argument advanced by the learned counsel for the petitioner that the plaintiff is not entitled to file the suit without obtaining prior permission from the Board as per Section 29 of the Act, does not merit acceptance.

13. In respect of Section 57 of the Act is concerned, as per para-5 of the written statement, dispute is between the brother and sister. The allottee is the plaintiff and the first defendant is in possession of the suit property. The plaintiff after giving representation before the Board, has filed the suit. In the decision reported in **2015 (4) CTC 159 (Ambika and another v. M. Shamshad and another)**, the Board is not a party to the proceedings. Therefore, the above decision is not applicable to the facts of the present case. So the argument advanced by the learned counsel for the petitioner that only prescribed authority alone can evict the occupant, does not merit acceptance. It is pertinent to note that in para-21 of the earlier judgment itself, it was clearly mentioned that the appellant has not advanced any argument in respect of adverse possession.

14.Considering the aforestated facts and circumstance of the case, I am of the view, the appellant has preferred this review application only with a malafide intention to drag on the proceedings and it is clear abuse of process of the Court. Therefore, the Review Application is dismissed with costs. Accordingly, the appellant/review petitioner is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to the Tamil Nadu Legal Services Authority, High Court, Madras. Consequently, connected Miscellaneous Petition is closed.

30.03.2016

Index:Yes

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R.MALA,J.

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Rev.A.No.201 of 2015
in M.P.No.1 of 2015

30.03.2016