

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.03.2016

Coram:

The Hon'ble Mr.Justice **V.RAMASUBRAMANIAN**

and

The Hon'ble Mr.Justice **N.KIRUBAKARAN**

Review Application No.103 of 2011 and M.P.No.1 of 2011
in W.A.No.1844 of 2009

1. S.M.Palani Gounder
2. P.Seethammal

... Applicants

Versus

1. K.Sukumar
2. The Superintendent of Police (Rural)
Coimbatore District.
3. The Deputy Superintendent of Police
Perur, Coimbatore.
4. The Inspector of Police,
Vadavalli Police Station,
Coimbatore.

... Respondents

Review Application filed under Order 43 Rule 1 & 2 read with
Section 114 of CPC seeking to review the Order dated 25.08.2010
made in W.A.No.1844 of 2009.

For Applicants : Mr.M.Balasubramanian

For Respondent-1 : Mr.P.Mathivanan

ORDER

(Delivered by V.RAMASUBRAMANIAN, J)

Heard Mr.M.Balasubramanian, learned counsel appearing for the Applicant and Mr.P.Mathivanan, learned counsel appearing for the first respondent.

2. By a common order passed on 25.8.2010 in W.A.No.1844 of 2009 and Review Application No.124 of 2010, a Division Bench of this Court allowed the Review Application as well as the Writ Appeal and directed reopening of an Execution Petition pending on the file of the Principal District Munsif Court, Coimbatore. As against the said order, the first respondent in the writ appeal and the second respondent in the Review Application has come up with the present review.

3. The portion of the common order against which the applicant has come up with the above review application is found in paragraph 15 and it reads as follows:

"15. Therefore, we are of the considered view that the matter requires fresh consideration by the Executing Judge. Accordingly, we direct the learned Principal District Munsif, Coimbatore to re-open the Execution Petition in E.P.No.96 of 2002 and appoint

an Advocate Commissioner to inspect the property and identify the subject property with reference to survey records and the documents of title, with advance notice to all the parties in the Execution Petition including the first respondent in the review application. The delivery of property should be in accordance with the report submitted by the Advocate Commissioner, duly identifying the property shown in the schedule to the Execution Petition."

4. But unfortunately, the present review is filed only in Writ Appeal No.1844 of 2009. The order in Writ Appeal No.1844 of 2009 is found in para 16 of the order in review. The Review Applicant is not aggrieved by para 16.

5. In other words, what the review applicant is seeking is a review of the order passed in a review application. A review of an order passed in a review application is not maintainable in law. This is why the review applicant has chosen to file this application as against the writ appeal order, contending that it was a common order.

6. But unfortunately for the applicant, the order contains two portions, one dealing with the Review Application and another dealing with the writ appeal. Hence, the present application is not maintainable.

7. It is the contention of Mr.M.Balasubramanian, learned

counsel that the Execution Petition is not pending before the Principal District Munsif Court, Coimbatore and that it has already been closed after recording delivery. It is stated that it was closed on 4.6.2008, long prior to the order under review.

8. It is true that without setting aside the delivery recorded in the Execution Petition, the Division Bench has directed the Principal District Munsif to reopen the Execution Petition. But if nothing survives in the Execution Petition, it is always open to the Review Applicant to workout his remedies before the very same Execution Court, pointing out that there was nothing to be reopened. Therefore, the Review Application is dismissed leaving it open to the applicant to raise all the points before the Executing Court, if at all nothing is to be reopened. No costs. Consequently, M.P.No.1 of 2011 is closed.

(V.R.S., J) (N.K.K., J)
28.03.2016

Index : Yes or No
Internet : Yes or No

To
The Principal District Munsif Court, Coimbatore.

V.RAMASUBRAMANIAN, J
AND
N.KIRUBAKARAN, J

gr

Review A.No.103 of 2011

28.03.2016