

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2016

CORAM:

**THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR**

Review Application No.109 of 2007 in A.S.No.469 of 1992

1. R.Varadarajan  
2. R.Suresh Kumar  
3. R.Velumani  
4. R.Boopathi  
5. R.Bhuvaneswari ... Petitioners

Vs.

1. Thulasi  
2. Mounasamy  
3. K.Aruchamy  
4. Karrupathal  
5. K.Karrupusamy  
6. K.Palanisamy ... Respondents

Prayer: Review Application filed Under Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure Code against the Judgment and Decree dated 8.2.2007 made in A.S.No.469 of 1992 on the file of this Court reversing the judgment and decree dated 14.1.1992 made in O.S.No.230 of 1987 on the file of the Subordinate Judge, Coimbatore.

For Petitioners : Mr.V.Raghavachari

For Respondents : Mr.N.Vijayaraj,  
Mr.K.Shankar for R.1  
Mr.R.Saseetharan  
for RR.3 to 6

**ORDER**

This Court passed an order on 14.3.2016 admitting the Review Application pointing out the fact that this Court, in the judgment sought to be reviewed, non-suited the plaintiff for the relief of partition on the ground that the suit for partition could not be sustained since the plaintiff had not prayed for declaration of title to the suit property and holding that since the same was projected as an error apparent on the face of record, it was a fit case in which the review application should be admitted, so as to pave the way for re-hearing of the appeal. The operative portion of the order reads as under:

"Accordingly the review is admitted. Post the matter for final hearing on 28.3.2016. Send for records from the lower Court, if they are not retained in the Registry."

2. The matter came to be listed as directed in the Order and after adjournments it has come up today for further hearing. Mr.V.Raghavachari, learned counsel for the petitioners in the review application, would submit that the admission of review application itself shall amount to grant of the prayer for review and the judgment sought to be reviewed shall be deemed to have been wiped off and the Court has to hear the appeal afresh.

3. On the contrary, Mr.N.Vijayaraj, learned counsel for the contesting 1st respondent would submit that the proceeding in a review application involves the following three stages:

- 1) admission;
- 2) granting the prayer for review; and
- 3) the final product on the main case after re-hearing the main case on the grounds on which review has been granted.

In support of his contention, learned counsel for the contesting respondent relied on the following judgments:

- "1. Sakal Singh and others Vs. Smt.Devi and another reported in AIR 1979 Allahabad 274 (Full Bench);**
- 2. Aribam Tuleswar Sharma Vs. Aribam Pishak Sharma and others reported in AIR 1970 Manipur 26 (Single Judge); and**
- 3. Rekha Mukherjee Vs. Ashis Kumar Das and others reported in (2005) 3 SCC 427."**

4. Of course, the learned counsel for the contesting respondent is correct when his contention is considered in the light of the judgment of the single Judge of the Manipur High Court and the judgment of the Full Bench of the Allahabad High Court referred above.

5. In **Sushil Kumar Sen Vs. State of Bihar** reported in **(1975) 1 SCC 774**, it was observed as under:

"It is well settled that the effect of allowing an application for review of a decree is to vacate the decree passed. The decree that is sufficiently passed on review, whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one."

6. The said view was quoted with approval in the case of **Rekha Mukherjee Vs. Ashis Kumar Das and others** reported in **(2005) 3 SCC 427**. The Supreme Court also observed in the said case that the order granting review shall have the effect of superseding the original decree, which shall not get revived subsequently and only the decree passed on such review either in line with the original decree or with any deviation from the original decree alone shall survive.

7. A conjoint reading of the observations made in all the above judgments relied on by the learned counsel for the contesting respondent will make it clear that a review proceeding involves three stages which are as follows:

1) The first stage dealing with the admission – if the Court finds no grounds to entertain the review application, it can reject it.

2) The second stage is after admission of the review application - the Court may grant or may not grant review. In case of grant of review, the original decree will get superseded. In case, the grant of review is refused, it will result in dismissal of the review application. In that case, Original decree will not get eclipsed.

3) Then comes the third stage. If the original decree sought to be reviewed is eclipsed by an order granting review, then the suit or appeal has to be re-heard and a fresh decree shall be passed. Even an order reversing the grant of review will not cause revival of the original decree. After the grant of review, the original decree, review of which has been granted, shall stand buried for ever without any room for its resurrection.

8. Since in this case, the order dated 14.3.2016 was only an order admitting the review application, which implies that the review application was not liable to be rejected at the initial stage itself, this Court has to pass an order as to the granting or otherwise of the review sought for in the review application.

9. Upon considering the submissions made on both sides and after going through the contents of the judgment, which is sought to be reviewed, this Court comes across the following error, which is

projected as an error apparent on the face of the record:-

The suit is one filed for partition, based on the contention that the plaintiff and the 1<sup>st</sup> defendant are the legal heirs of the original owner who died intestate, on the premise that their mother and mother's sister became testamentary legal heirs under the Will of original owner Palaniammal and after the death of Palaniammal and after the death of the legatees therein, the plaintiff and the 1<sup>st</sup> defendant became entitled to the properties in equal moieties. However, the 2<sup>nd</sup> defendant claimed to be the sole legal heir in respect of items 1 and 3 of the suit properties by virtue of a Will, which was allegedly executed by the very same testator - Palaniammal revoking the earlier Will relied on by the plaintiff. The learned Judge, after traversing the evidence, came to the conclusion that the 2<sup>nd</sup> Will propounded by the 2<sup>nd</sup> defendant was not proved. However the learned Judge arrived at a conclusion that since the property was with the 2<sup>nd</sup> defendant, the plaintiff could not maintain the suit for partition, without seeking declaration of title. In a suit for partition against persons staking claim as legal heirs (either testamentary or non-testamentary) of the original owner, it shall not be necessary to seek declaration of title to maintain the prayer for partition.

10. As rightly contended by the learned counsel for the petitioners, the same is an error apparent on the face of the record,

which shall justify the grant of the prayer for review of the judgment. Accordingly, **the review application is allowed** and the review sought for is granted. The Registry is directed to make an entry regarding the grant of review reviewing the judgment of this Court dated 8.2.2007 made in A.S.No.469 of 1992 on the file of this Court. No costs.

11. After allowing the Review Application and granting review sought for, opportunity to the contesting parties is given to make their case on the merits of the appeal and arguments advanced on both sides are heard. Judgment is reserved.

04.04.2016

Index:Yes/No  
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**P.R.SHIVAKUMAR,J.**

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