

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2017

Coram

The Honourable **Mr.Justice HULUVADI G.RAMESH**

and

The Honourable **Mr.Justice V.PARTHIBAN**

Review Application No.143 of 2016

D.Amsaveni ... Applicant

versus

1. The Joint Sub Registrar No.I,
Saidapet,
South Chennai.

2. D.Raja

3. M.Saravanan

4. Mr.S.Sadhasivam

... Respondents

Prayer: This review application is filed seeking to review the order of the Court dated 18.10.2016 made in W.A.No.689 of 2016.

For Applicant

:

Mr.Sankara Subbu for
Mr.B.Sudhir Kumar

For Respondents

: Mr.P.S.Sivashanmugasundaram,
Spl.G.P. for R1

Ms.Valsala for

Mr.S.Kumaresan for R2

Mr.K.Balu for R3

Mr.G.Ethirajulu for R4

ORDER

(Order of the Court was made by HULUVADI G.RAMESH, J.)

This Review Application is filed by the petitioner, seeking to review the order of the Court dated 18.10.2016 made in W.A.No.689 of 2016.

2. The review applicant herein is the second respondent in both the Writ Petition and the Writ Appeal before this Court.

3. The above mentioned property was exclusively belonging to the review applicant. The writ petitioner is none other than the adopted son of the review applicant. It appears that the review applicant executed a settlement deed dated 13.11.2008 both in favour of the writ petitioner and her daughter in respect of the subject property, while retaining the property with her till her life time. However, later due to misunderstandings, the review applicant executed the deed of cancellation dated 6.4.2014. Thereafter, it appears that the review applicant executed a sale deed in favour of one

Saravanan, 3rd respondent herein.

2. Aggrieved by the cancellation of the settlement deed, the writ petitioner moved a Writ Petition in W.P.No.20657 of 2015, for issuance of a Writ of Declaration, to declare the registration of the unilateral cancellation deed executed by one Tmt.D.Amsaveni, the review applicant herein, in respect of the land, premises measuring 3440 sq.ft. with building thereon bearing D.No.3/8, Plot No.70 and 88 of Rajeswari Nagar, Porur, Chennai, is null and void.

3. Having considered the rival submissions made by both parties, the learned single Judge dismissed the writ petition by holding that in fact, the writ petitioner had not derived any right since the recitals contained in the settlement deed dated 13.11.2008 executed by the review applicant would clearly indicate that the title of the property will transfer only after the life time of the review applicant and therefore, no right or title much less possession of the subject property had been transferred in favour of the writ petitioner. Therefore, the

learned Judge was of the view that no case is made out to interfere with the registration of the cancellation deed dated 6.11.2014. However, the learned Judge has made clear that the order made in the writ petition would not foreclose the right of the writ petitioner to approach the competent Civil Court for redressal of his grievance in accordance with law.

4. Challenging the order of the learned single Judge, the writ petitioner preferred an appeal in W.A.No.689 of 2016 before this Court. This Court was of the view that it is an attempt by the writ petitioner to make out a case for declaration under Article 226 of the Constitution of India, which had to be established by the writ petitioner by making out a prima facie case by giving opportunity to the other side for filing a written statement. The remedy is very much available before the Civil Court to establish the case and then to obtain an order in accordance with law. Having observed this, this Court dismissed the writ appeal, giving liberty to the writ petitioner to approach the civil Court.

5. Now, the second respondent in both the writ petition

and writ appeal, has come forward with the present review petition, seeking to review the order, by taking a contrary stand to to which, she had taken in the writ petition.

6. Mr.Sankarasubbu, learned counsel appearing for the review applicant would submit that after execution of the settlement deed, the review applicant handed over possession of the subject property to the writ petitioner and her son, however, later, the review applicant was compelled and obtained her signatures in several stamp papers, cheques, bonds, etc. without informing her as to what was actually being transferred. He pointed out that the review applicant was not aware of sale deed dated 9.6.2015 in favour of third party. He also submitted that the review applicant has not cancelled the settlement deed dated 13.11.2008 and any unilateral cancellation deed is not valid in law. He would also submit that the review applicant was not aware of the writ proceedings and the counsel who appeared for the review applicant in the writ petition had also appeared for 3rd respondent in the writ appeal. Therefore, the learned counsel would vehemently contend that the review applicant was not

heard and no opportunity was given to put forth all her contentions vis-a-vis real facts before this Court. In such circumstances, the learned counsel sought for reviewing the order passed by this Court.

7. Having heard the learned and on going through the entire facts and circumstances of the case, we do not find any error much less apparent on the face of the record to entertain the present review application. Once an order is pronounced, it should not be altered, unless there is an apparent error. It is settled that erroneous finding is not a ground for review, so also improper consideration for that matter. It is to be noted that after the orders passed by the learned single Judge who dealt with the issue in depth, no review was moved before him by the review applicant enlightening her version which was taken now contrary in the present review petition. In fact, the learned Judge though dismissed the writ petition on merits, however, observed that his order will not foreclose the right of the petitioner to approach the competent Civil Court for redressal of the grievance of the writ petitioner in accordance with law. While

dismissing the writ appeal, we also fortified the view of the learned single Judge and that the writ petitioner cannot make out a case for declaration in respect of the subject property under Article 226 of the Constitution of India. Therefore, we do not find any scope to review the order. Further, the writ petitioner is also given liberty to approach the Civil Court. However, once again it is made clear that the review applicant is at liberty to approach the competent Civil Court, canvass all the points that were urged before this Court in this review application and seek for appropriate relief by moving an application/suit, if she is so advised, in the manner known to law.

8. In view of the above, the Review Application fails and it is dismissed. No costs. सत्यमेव जयते

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(H.G.R.,J.) (V.P.N.,J.)
01.11.2017

HULUVADI G.RAMESH, J.

and
V.PARTHIBAN, J.
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