

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2016

CORAM

THE HONOURABLE Mr.Justice P.R.SHIVAKUMAR

Rev.Appl.No.61 of 2016

Adityaram Properties Pvt. Ltd.
rep. by its Cheif Accountant

.. Appellant/Petitioner

Versus

1. Santhanam,
2. Rani
3.Vijaya alias Pattu
4.Devi
5.Kokila
6.V.Elumalai
7.V.Jayaraman

...Respondents/Defendants

Prayer: This Review Application has been filed against the Judgment and Decree dated 02.06.2015 passed in A.S.No.726 of 2009 and set aside the same.

For Petitioner : Mr. T.R.Rajagopalan, Senior Counsel
for Mr.T.M.Pappiah

For Respondents : Mr.S.Ve.Jayaraman, Senior Counsel
1 to 5 & 7 for Mr.P.Chandrasekaran

For Respondent-6 : Mr.V.Karthikeyan

ORDER

The appellant in A.S.No 726 of 2009 has preferred this review application for review of the judgment pronounced in the said appeal suit on 02.06.2015 on the ground that an argument which was not advanced came to be incorporated in paragraph 24 of the judgment as if, the said argument was advanced on behalf of the appellant and also on the ground that there is error apparent on the face of the record in so far as this Court held that the appellant was not entitled to the relief of specific performance disregarding the

admissions made by the witnesses examined on the side of the respondents/defendants.

2. The arguments advanced by Mr.T.R.Rajagopalan, learned Senior Counsel for the review applicant and Mr.S.Ve.Jayaraman, learned Senior Counsel for the respondents 1 to 5 and 7 and Mr.V.Karthikeyan, learned counsel for the sixth respondent are heard.

3. The applicant seeks review of the judgment on two grounds, . The first ground is that this Court incorporated a sentence in paragraph No.24 of the judgment as if it was represented during the course of the arguments in the appeal that the appellant/plaintiff was not interested in getting a decree for specific performance against the sixth respondent and in respect of his 1/7th share alone, when no such argument was advanced. Mr.T.R.Rajagopalan, learned Senior Counsel submits that no such argument was advanced but somehow or other this Court made an observation to that effect. Mr.S.Ve.Jayaraman, learned Senior Counsel appearing for the respondents 1 to 5 and 7 and Mr.V.Karthikeyan, learned counsel for the 6th respondent, who had also appeared in the appeal for the respective respondents would state that the arguments advanced by the learned Senior Counsel for the appellant was in general for specific performance against all the respondents. This Court also does not find any note in the notes of arguments taken down by this Court, which goes to the effect that no specific argument was advanced for the grant of specific relief at least in respect of the 1/7th share of the sixth respondent. It is also argued that while reproducing the same, the mistake could have crept in as if it was argued that the appellant/plaintiff was not interested in getting a decree for specific performance in respect of the 1/7th

share of the sixth respondent alone. This Court does not want to go into the controversy, when the learned Senior Counsel himself has come forward with a plea that an argument for the grant of specific relief atleast in respect of 1/7th share of the 6th respondent should be granted was allowed. As this Court has to maintain the dignity of the Court and also the profession, this Court taking the submissions made by Mr.T.R.Rajagopalan, learned Senior Counsel to be correct hereby holds that the last sentence in paragraph 24 of the judgment which reads " In fact, during the course of argument, it was represented to this Court that the appellant/plaintiff was not interested in getting a decree for specific performance against the 6th respondent and in respect of his 1/7th share alone", has got to be expunged.

4. Hence, the next question to be considered by this Court is whether the judgment needs review after expunging the said portion? In fact, the above said observation was made only as a passing reference in support of the conclusion arrived at by this Court to the effect that the appellant/plaintiff was not entitled to the relief of specific performance against any of the respondents. Sufficient reasons have also been assigned pointing out the failure on the part of the appellant/plaintiff to prove his readiness and willingness and also his choice of filing a suit for bare injunction without going for a suit for specific performance. Hence the expungement of the last sentence will not alter the decision and it can not be a ground on which the judgment can be reviewed and the appeal can be reheard.

5. The second ground raised in the review application is that there is an error apparent on the face of the record. According to the petitioner, this court negatived the prayer for the relief of specific performance disregarding

the admissions made by the witnesses examined on the side of the respondents. This Court rendered a finding to the effect that the appellant/plaintiff had not proved the conditions stipulated in Section 16(c) of the Specific Relief Act and that hence, he was not entitled to the relief of specific performance against any one of the respondents. This Court also referred to the frivolous steps taken by the appellant/plaintiff through police and other officials and also an attempt made by him to claim that possession was delivered to him in part performance of the Agreement for Sale. On a thorough scrutiny of the pleadings and evidence, this Court came to the conclusion that the said contention was not substantiated. This court also, on re-appreciation of evidence, held that the appellant/plaintiff was not entitled to the relief of specific performance against any one of the respondents and even in respect of a portion of the suit property. There is no error apparent on the face of record warranting a review of the judgment. Hence, this Court comes to the conclusion that the review application deserves to be rejected subject to the ex pungent indicated above.

Accordingly, the last sentence in paragraph No.24 of the judgment of this court dated 02.06.2015 made in A.S.No.726 of 2009 that reads as " In fact, during the course of argument, it was represented to this Court that the appellant/plaintiff was not interested in getting a decree for specific performance against the 6th respondent and in respect of his 1/7th share alone" shall stand expunged and the Review Application is rejected subject to the ex pungent indicated above. No costs.

18.04.2016

Index : Yes / No
 Internet : Yes / No
 smi/asr

P.R.SHIVAKUMAR, J.

smi/asr

Rev.Appl.No.61 of 2016

18.04.2016