



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Rev.Applc.(MD) No.98 of 2016

and

C.M.P.(MD).No.10753 of 2016

in

S.A.(MD).No.392 of 2016

Sikkanan ... Petitioner /Appellant in S.A.392 of 2016

Vs.

Ganesh Murali ... Respondent /Respondent in S.A.392 of 2016

PRAYER: Review petition filed under Order 47 Rule 1 and 2 r/w Section 114 of the Code of Civil Procedure, seeking to review the judgment and decree, dated 07.06.2016, made in S.A.(MD)No.392 of 2016 .

PRAYER IN in S.A.(MD)No.392 of 2016:

Second Appeal is filed under section 100 of C.P.C., to set aside the Judgment and decree dated 30.10.2015 passed in A.S.No.14 of 2015 on the file of the Principal District Judge, Dindigul District, confirming the Judgment and decree dated 20.01.2015, passed in O.S.No.86 of 2012 on the file of the Additional Subordinate Judge, Dindigul.

For petitioner ... Mr.M.Muthugeethayan

For respondent Mr.J.Bharathan
for Mr.T.R.Jeyapalam

ORDER

In a suit for specific performance, the defendant, who had lost before both the Courts below, had preferred the Second Appeal No.392 of 2016, in which the judgment was delivered on 07.06.2016 by a learned Single Judge of this Court. The said judgment is now sought to be reviewed by the defendant/appellant.

2.Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3.The learned counsel appearing for the review petitioner contended that it is stated in paragraph No.5 of the judgment that it is contended on the side of the appellant that only Xerox copy of the agreement was filed and in that one of the attestors alone has signed and therefore, the genuineness of the sale agreement is



questionable. However, from the perusal of the records, it is found that only the original sale agreement was filed along with the suit and hence, the submission of the appellant is rejected.

4. It is now contended by the learned counsel for the review petitioner that when PW1 had categorically stated that in the duplicate copy of the agreement of sale, only one witness had attested, who was examined as PW2 and no other person had attested in the agreement, this Court, misinterpreting the evidence of PW1 and PW2, held that the argument advanced by the learned counsel for the appellant that at the time of filing of the suit only Xerox copy of the sale agreement had been filed and it contained the signature of only one of the attestors, does not merit acceptance.

5. According to the review petitioner, when the Court has called upon to interpret the document and to examine its effect, it involves the question of law. It is, therefore, obligatory on the High Court to decide such question on merits. However, the same can be done only after formulating the substantial question of law as required under Section 100 of C.P.C. As no question of law was framed and the matter was disposed of without answering the question of law raised in the grounds of appeal, it is contended that there is a jurisdictional error committed while dismissing the appeal. Hence, the matter is sought to be reviewed.

6. When it is admittedly a jurisdictional error, according to the petitioner, the same cannot be reviewed. Under Order 47 Rule 1 of C.P.C., a judgment may be open to review only if there is an error or a mistake apparent on the face of the record. If there is an error, which has to be detected by a process of reasoning, the same cannot be said to be an error apparent on the face of the record, warranting the Court to exercise its power of review under Order 47 Rule 1 C.P.C. It is a settled principle that under Order 47 Rule 1 of C.P.C., it is not permissible for an erroneous decision to be reheard and corrected, as a review petition cannot be treated as an appeal in disguise.

7. As stated above, in the present case, the error contemplated in the impugned judgment cannot be said to be one apparent on the face of the record, as the error is one of jurisdiction. As long as the point is already dealt with and answered, it is open to the parties only to challenge the same in appeal and they cannot invoke the review jurisdiction. The Court shall interfere in the review jurisdiction only when there is a glaring omission or patent mistake or when a grave error has crept in the impugned judgment. The error that is pointed out by the petitioner for the review petitioner is not a ground for review, as the same has been dealt with by the learned Judge. If the petitioner is so aggrieved, considering the same to be



erroneous, it is open to challenge in appeal, which cannot be done so in the review.

8. In the result, this review application is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registra

To

1. The Principal District Judge, Dindigul.
2. The Additional Subordinate Judge, Dindigul.

COPY TO:

The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.T.R.JEYAPALAM, Advocate SR.No.76916
+1cc to M/S.M.MUTHUGEETHAYAN, Advocate SR.No.76745

gcg
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