

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Review Application No.119 of 2017

Gunasundari

.. Petitioner

Vs.

1.A.Valarmathi
Ananthaai(died)
2.G.Periyasamy
3.Dhanapal Chinnasamy (Teacher)
4.G.Edward
5.G.Saradha
6.Gowriammal
7.Gandhimathi
8.Anandraj
Vinoth kumar(died)
9.Gunasekaran
10.M.Chandran

.. Respondents

(The Respondents 2 to 10 are
given up in the above Review petition)

PRAYER: Review Petition filed under Section 114 of the C.P.C. Read with order XLVII rule 1 of C.P.C to Review the order dated 23.06.2017, made in CRP(PD). No. 2623 of 2016.

For petitioner : Mr.N.A.Malai Saravanan

For R1 : Mr.Naveen
for Mr.V.P.K.Gowtham

ORDER

This Review application is filed to review the order dated 23.06.2017 made in CRP(PD).No.2623 of 2016.

2. Heard the learned counsel appearing for the review petitioner as well as the first respondent and perused the materials available on record.

3. The Review petitioner is the first respondent, first respondent is the petitioner and respondents 2 to 10 are the respondents in the above Civil Revision Petition, filed against the order dated 13.06.2016 made in I.A.No.37 of 2013 in O.S.No.138 of 2006. The Review petitioner filed the suit in O.S.No.138 of 2006 against the respondents herein, for permanent injunction, restraining the respondents from interfering with his peaceful possession and enjoyment of the suit property. In the suit, she filed an application in I.A.No.456 of 2006 for permission to file separate suit for specific performance of the agreement of sale dated 29.01.2006 and subsequently obtained leave of the Court. The

Review petitioner filed I.A.No.37 of 2013 for amendment of the plaint, to include the relief of specific performance. According to the review petitioner, she could not file a separate suit for specific performance as she could not get the sale deed dated 15.03.2006 executed in favour of the first respondent herein/6th defendant. According to the review petitioner, in order to avoid multiplicity of proceedings, she was advised to file application for amendment. The learned Judge allowed the application. Against that order, the first respondent herein filled CRP(PD).No.2623 of 2016. This Court, considering the fact that the review petitioner failed to file a suit for specific performance after obtaining leave of the Court to file separate suit for specific performance in I.A.No.456 of 2006 within a period of limitation, allowed the Civil Revision Petition on the ground that the review petitioner is not entitled to seek amendment of the plaint to include the relief of specific performance of the agreement of sale.

4. The present review petition is filed to review the said order.

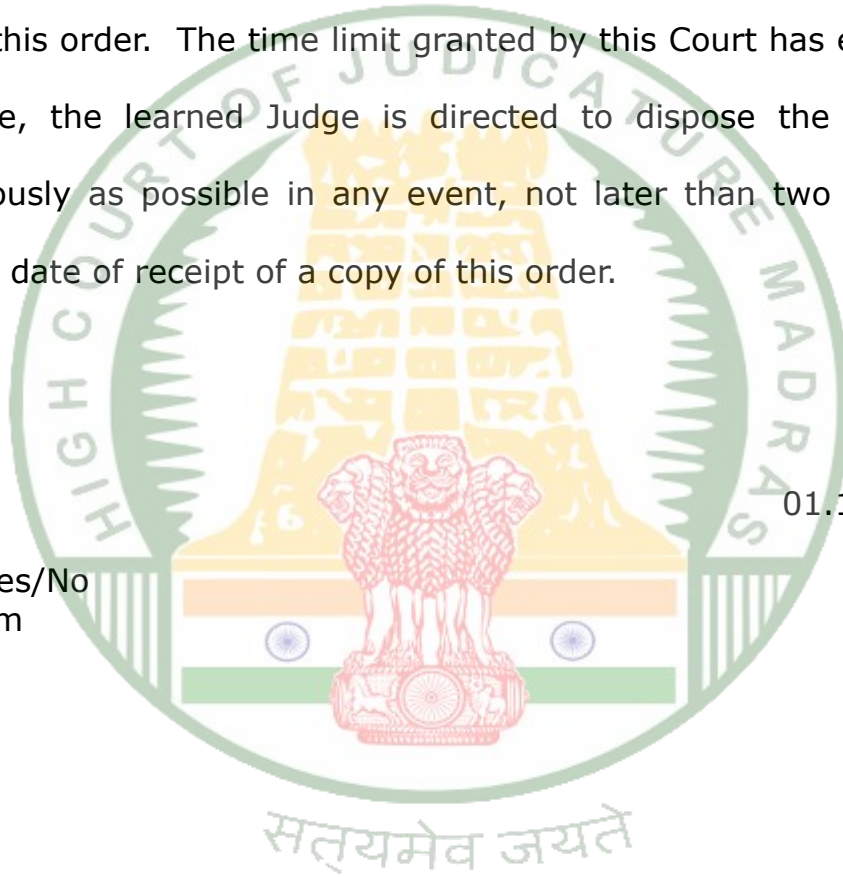
The learned counsel appearing for the review petitioner submitted that the first defendant in the suit has not refused to execute the sale deed in favour of the petitioner. She has also stated that the

sale deed in favour of the first respondent is fraudulent one. Therefore, as per the 2nd limb of Article - 54 of the Limitation Act, 1963, amendment sought for by the petitioner is not barred by limitation. According to the review petitioner, this Court failed to consider this fact and judgment relied on by the learned counsel for the first respondent reported in **(2010) 14 SCC 596 (Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Registered) V. Ramesh Chander and others)**. These contentions were not raised before the learned Judge in the application for amendment and also before this Court, at the time of hearing of the Civil Revision Petition. It is not open to the review petitioner to raise new grounds on merits. The learned counsel is not entitled to re-argue the matter. I find there is no error on the face of record warranting reconsideration of the said order. The review application is dismissed. No costs. The contention of the learned counsel for the petitioner that order was implemented and review petitioner has paid Court fee of a sum of Rs.11,325.50/- is not a ground for review. The learned Judge is directed to delete the amendment carried out by the petitioner and proceed with the suit on merits and in accordance with law.

5. This Court by the order dated 23.06.2017, directed the learned Judge to dispose the suit as expeditiously as possible in any event, not later than three months from the date of receipt of copy of this order. The time limit granted by this Court has expired. Therefore, the learned Judge is directed to dispose the suit as expeditiously as possible in any event, not later than two months from the date of receipt of a copy of this order.

Index: Yes/No
gsa/msrm

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V.M.VELUMANI, J.

msrm



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