

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **6-10-2017**

CORAM

THE HONOURABLE Mr.JUSTICE **P.KALAIYARASAN**

Rev.A.No.31 of 2017
in
S.A.No.209 of 2004

S.V.Selestian
Rep. by his Power Agent Irudayaraj .. Applicant

Versus

1. Chitra
2. M.Thangapragasam
3. Periyamayagam ... Respondents

(R2 and R3 given up)

Prayer: Review Application filed under Order 47 Rule 1 r/w Section 114 CPC against the Judgment and Decree, dated 01.12.2016 passed in S.A.No.209 of 2004 and C.M.P.No.1090 of 2004 by this Court.

For Applicant : Mr.P.Subba Reddy

For Respondents : Mr.T.P.Manoharan,
Senior counsel for
Mr.K.P.Jotheeswaran for R1
R2 and R3 given up

ORDER

The Review Application has been filed under Order 47 Rule 1

<http://www.judis.nic.in/> r/w Section 114 CPC seeking to review the Judgment and Decree

passed in S.A.No.209 of 2004 and C.M.P.No.1090 of 2004, dated 01.12.2016.

2. The applicant in the Review Application is the plaintiff / appellant in the Second Appeal. The suit was filed to declare that the plaintiff is the absolute owner of the suit property and the registration of the sale deed in favour of third defendant dated 06.09.1984 and registered on 12.02.1985 as null and void and also to remove the encroachment made by the third defendant and also to demarcate the suit property by metes and bounds. The suit was dismissed by the trial Judge and the plaintiff succeeded in the first appeal and lost in the second appeal.

3. It is averred in the petition that this Court in its Judgment while holding that the sale deed in favour of third defendant is not valid in law and cannot be taken in evidence, has relied upon invalid document and the same is a mistake apparent on the face. The plaintiff never claimed the defendant's property and the consistent stand taken by the defendant is that D3 has only trespassed into the property of the plaintiff. But this Court misconstrued itself and concluded that the plaintiff claimed the defendant's property as of his property. This Court construed the adangal and chitta in Ex.P.7 as that of the suit property and the same is a mistake apparent on the face of

the record.

4. It is well settled that power of review is different from appellate power. Power of Review is to be exercised (i) on the discovery of new and important matter or evidence and (ii) where some mistake or error apparent on the face of the record is found.

5. The learned Senior counsel appearing for the first respondent cited our Hon'ble Supreme Court Judgment in Meera Bhanja v. Nirmala Kumari Choudhury reported in (1995) 1 SCC 170. In this Judgment, it has been held as follows :

8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleswar Sharma v. Aribam Pishak Sharmal, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

"It is true as observed by this Court in Shivdeo Singh v. State of Punjab (AIR 1963 SC 1909) there is nothing in Article 226 of the

Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."

6. It is also well settled that even any erroneous decision cannot be a ground for the Court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality

75].

7. The pleading as to the annulment of the sale deed in favour of D3 of the plaintiff is extracted as below :

"A plain reading of the sale deed of third defendant which was executed on 6th September 1984 by the agent of the Defendant No.1 and 2 in favour of the Defendant No.3 for an alleged money consideration of Rs.5,000/- refers to the suit property only. The document was presented for registration before the Sub-Registrar of Oulgaret Commune Panchayat on 12th February 1985 at 4.05 p.m. The sale deed of the plaintiff was given registration Number as No.313/85. The sale deed of the Defendant No.3 presented in the name, date and the same hour was given registration number as No.314/85. Under Section 23 of the Registration Act, the sale deed of the Defendant No.3 of executed on 6th September, 1984 must have been presented within 4 months from the date of execution of document. On the face of the Registration Certificate under sale deed of the Defendant No.3 clearly shows that it was presented only on 12th February, 1985, i.e., after lapse of 5 months and 5 days. The document shows the delay was not condoned by the Registrar under Sec.25 of the Registration Act. Therefore, the registration of the said documents becomes

void and unenforceable. So, under Sec.49 of the Registration Act, a sale deed cannot be received an evidence as a valid transfer of the suit property by the Defendant No.1 and 2 in favour of the Defendant No.3. Since the transfer of the suit property in favour of the plaintiff is borne by the document No.313/85 executed on 31.1.1985, duly registered within the time stipulated under Sec.23 of the Registration Act, should be deemed to be valid as against the sale deed of the third defendant which is void and nullity and the plaintiff has got paramount and better title over the suit property than Defendant No.3. Under these circumstances, Defendant No.3 cannot derive any title over the suit property by virtue of the alleged sale deed dated 6.9.1984 as the registration is void and hit by Sec.23 of the Registration Act and Transfer of the Property Act and the legal consequence of Sec.49 of the Registration Act will have necessarily follow."

8. Thus no fraud has been pleaded as to the execution of the document. No doubt this Court found some correction in the date in the said document. The main plea for annulment of this document is that as per Section 23 of the Registration Act, the document should have been presented within four months from the date of the execution of the document and the same was presented after the said

prescribed period and therefore, the plaintiff wanted the said document to be treated as void. The sale deed is compulsorily registrable under Section 17 of the Registration Act. Under Section 49 of the Registration Act, if the document is unregistered the same can be taken for collateral purpose. For the purpose of bringing forth the dispute as to the identity of the property, the document was considered by this Court.

9. The specific case of the plaintiff is that the plaintiff has been in possession of the suit property and subsequent to the filing of the suit, third defendant trespassed into the suit property. It is not the consistent case of the plaintiff that third defendant trespassed and has been in possession of the property either from the date of the sale deed or from the date of filing of the suit.

10. The plaintiff's sale deed and the third defendant's sale deed, namely Ex.A.4 and Ex.A.9 shows different boundaries for the respective properties. The plaintiff's Advocate issued notice to D3 and the same has been marked as Ex.A.7. In the said notice also the plaintiff has clinchingly admits that the third defendant purchased adjacent southern site of the plaintiff even prior to his purchase. In the plaintiff's document, Ex.A.4 itself, southern boundary is shown as Chitra's land.

11. A conjoint reading of the plaint and notice Ex.A.7 would demonstrate that there is dispute as to the identity of the suit property. The third defendant in her written statement specifically states that she is the owner of the suit property and the property mentioned in the sale deed of the plaintiff is different from the suit property. Even after filing of the written statement, the plaintiff has not taken steps for appointment of Advocate Commissioner to identify the suit property as in the field.

12. This Court does not find any error apparent on the face of the Judgment and therefore, the contentions raised by the Review Applicant are rejected and accordingly, the review application is liable to be dismissed.

In fine, this Review Application is dismissed. No costs.

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Index : Yes / No

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To

1. The III Additional District Judge,
Pondicherry

2. The III Additional District Munsif,
Pondicherry.

P.KALAIYARASAN, J.

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**Pre-Delivery Order
in Rev.A.No.31 of 2017**

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