

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.04.2017

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

Rev. Appl.No.84 of 2016

in

S.A.No.865 of 2013

K.Natarajan

.. Applicant

Vs.

1.N.M.Sivan

2.P.Parvathi

.. Respondents

Review Application filed under Order XLVII Rule 1 r/w.Section 114 of the Code of Civil Procedure to review the judgment and decree dated 14.03.2016 and made in S.A.No.865 of 2013

For Petitioner : Mr.T.Dhanayakumar

For Respondent : Mr.K.P.Chandrasekaran
for Mr.C.Prakasam

ORDER

This memorandum of Review Application is directed under Order XLVII Rule 1 r/w.Section 114 of CPC to review the judgment and decree dated 14.03.2016 and made in the Second Appeal in S.A.No.865 of 2013 on the file of this Court.

2. Heard Mr.T.Dhanayakumar, learned counsel appearing for the review applicant/appellant and Mr.K.P.Chandrasekaran, learned counsel appearing on behalf of Mr.C.Prakasam, learned counsel on record for the first respondent.

3. The review applicant is the plaintiff in the suit in O.S.No.573 of 2004 and the appellant in the second appeal in S.A.No.865 of 2013. The respondents 1 and 2 are the defendants in the suit and the respondents in the appeal.

4.It is manifested from the records that the review applicant had filed the suit in O.S.No.573 of 2004 as against the respondents seeking the relief of specific performance of contract of sale in respect of the suit property. Having lost the suit before the trial Court as well as before the first appellate Court, the review applicant had filed the above said second appeal in S.A.No.865 of 2013.

5.After hearing both sides, this Court had proceeded to dismiss the second appeal confirming the judgment and decree of the Courts below.

6.It is the specific case of the first respondent herein that his signature had been forged to make it appear that he had executed the sale agreement in respect of the suit property. He had also specifically denied the signature find a place in Ex.A1 sale agreement. Rejecting the case of the review applicant/plaintiff, the trial Court as well as the first appellate Court had proceeded to dismiss the suit as well as the first appeal filed by the review applicant accepting the case of the first respondent/defendant. Now this review application has been filed by the review applicant after invoking the provisions of Order XLVII Ruel 1 r/w.Section 114 of the Code of Civil Procedure. What Sub-Rule 1 of Rule 1 of Order XLVII contemplates is that any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at

the time when the decree was passed or order made, on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

7. Insofar as Sub-Rule 1 of Rule 1 of Order XLVII is concerned, for making a review application for reviewing a judgment, one of the conditions is;

From the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by him at the time when the decree was passed or order made.

8. On coming to the instant case on hand, the review applicant has not satisfied this Court with reference to the above condition as envisaged under Sub-Rule (1) of Rule 1 of Order XLVII CPC. Secondly, the Courts below have given concurrent findings which according to this Court did not require its interference. Therefore, the judgment in the second appeal has been rightly passed in consonance with the provisions of Section 100 of the Code of Civil Procedure. Since the review applicant has failed to satisfy this Court

on the ingredients of sub-rule (1) of Rule 1 of Order XLVII CPC, this Court finds that the review application is liable to be dismissed as devoid of any merit.

Accordingly, the review application is dismissed.
However, there shall be no order as to costs.

05.04.2017

Index: Yes/No
Internet: Yes
gpa

T.MATHIVANAN.J.,

gpa

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