



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Review Application (MD) No.17 of 2017
and
C.M.P (MD) No.2133 of 2017

M.Radhamani

... Review Petitioner / Appellant

-Vs.-

1.Gomathiammal
2.Ramalakshmi
3.Shanmugavadivu

... Respondent / Respondent

Prayer : Review Application filed under Section 114 of Civil Procedure Code r/w. Order 47, Rule 1 and 2 of Civil Procedure Code, praying to review the judgment and decree passed on 21.09.2016 in S.A.(MD) No.373 of 2004, by this Court, by setting aside the same.

Prayer in SA(MD)No.373/2004:-

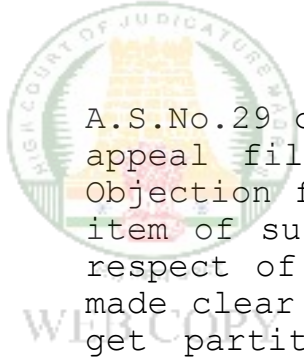
Second Appeal filed under Section 100 of CPC, preferred against the Judgment and decree passed by the Subordinate Judge, Sankarankovil, dated 16/12/2003 in A.S.No.29 of 2003 confirming the Judgment and decree passed by the District Munsif, Sankarankovil, dated 24/2/2003 in O.S.No.131 of 2000 .

For Appellant : Mr.F.X.Eugene

JUDGMENT

The appellant in the Second Appeal has filed this Review Application challenging the judgment of this Court made in S.A.(MD) No.373 of 2004, dated 21.09.2016.

2.The plaintiff namely the third respondent in the Second Appeal filed a suit for partition claiming 1/4th share in all the suit properties. Though the suit was dismissed in respect of the first item, the suit was decreed in respect of items 2 to 4 of the suit properties. Further, the trial Court also suggested that third item of the suit property should be allotted to the share of the first defendant / appellant. The judgment of the trial Court was challenged by the first defendant / appellant in the appeal in



A.S.No.29 of 2003. The plaintiff also filed a Cross Objection. The appeal filed by the first defendant was dismissed and the Cross Objection filed by the plaintiff was allowed in respect of the third item of suit property and decree for partition was also granted in respect of the third item insofar as the land is concerned. It is made clear by the trial Court that the plaintiff is not entitled to get partition in respect of the land where the rice mill and building is constructed. Aggrieved by the same, the first defendant preferred an appeal before this Court.

3.The appeal was argued at length and after hearing the appellants elaborately on all issues, the appeal came to be dismissed by this Court by judgment dated 21.09.2016. It is thereafter the present review petition has been filed by the appellant in the Second Appeal who is the first defendant in the suit.

4.It is seen from the judgment of the Courts below that a specific issue was framed with regard to the genuineness of the Will under Ex.B7 relied upon by the appellant. Holding that the appellant has not proved the Will in the manner known to law, the Courts below negatived the contentions of the appellant with regard to the Will under Ex.B7 propounded by him. Several reasons were given by the Courts below to hold that the Will is not proved. The appellant produced a certified copy of a mortgage deed alleged to have been executed by him as the exclusive owner in respect of suit third item. The said certified copy of the mortgage deed was sought to be marked as additional document before the lower Appellate Court by filing a petition under Order 41 Rule 27 of C.P.C. Since no acceptable reason was given by the appellant for the non-production of the document during trial, the petition filed by the appellant was dismissed along with the appeal in A.S.No.29 of 2003. In the second appeal filed by the review petitioner, the order rejecting the petition to receive the document, namely, the certified copy of the mortgage deed, as additional document was not challenged. At the time of arguing the Second Appeal, the learned counsel appearing for the appellant made a submission regarding the validity of the order rejecting the application filed by the appellant before the lower appellate Court to receive the certified copy of the mortgage deed as additional document. This argument was considered by this Court in paragraph 16 of the judgment in the Second Appeal. While considering the argument, this Court has, of course, observed that the appellant has not produced the document before this Court to consider the relevancy of the additional document sought to be marked before the lower Appellate Court to prove the execution of the Will. To be precise, this Court while dismissing the Second Appeal rejected the contention of the appellant, since the appellant has not even produced the additional document, namely, the certified copy of the mortgage deed to consider the relevancy of the same to prove the execution of the Will. It is in these background, the learned counsel for the appellant has filed the above Review petition on the ground that the additional document sought to be marked could be obtained by him only after the judgment dated



21.09.2016 and that therefore, the judgment in the Second Appeal should be reviewed. This Court is unable to accept the contention of the learned counsel for the review petitioner for various reasons.

5. First of all, the scope of review is confined to the grounds that are available under Order 47, Rule 1 of C.P.C. In this case, the document was produced before the lower appellate Court as additional evidence at the time of arguing the first appeal before the lower appellate Court under Order 41, Rule 27 of C.P.C. The lower appellate Court on the ground that the appellant / review petitioner has not satisfied the ingredients of the Order 41, Rule 27 of C.P.C. to receive additional evidence, dismissed the petition. Even in the memorandum of grounds in the Second Appeal, the order dismissing the petition filed by the review petitioner under Order 41, Rule 27 C.P.C. was not challenged. In such circumstances, the contention of the learned counsel for the review petitioner by referring to the document which was sought to be produced as additional document before the lower appellate Court, after the judgment dated 21.09.2016 is unacceptable.

6. It is well settled that the Court has no inherent power of review and unless a review petition is filed on any ground available under Order 47, Rule 1 C.P.C., the judgment on merits cannot be reviewed. Order 47, Rule 1 C.P.C. read as follows:

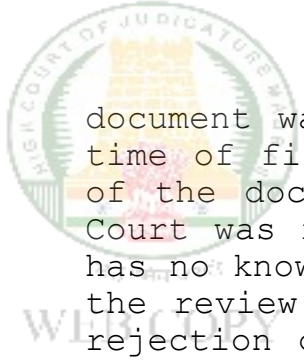
"1. Application for review of judgment.- (1) Any person considering himself aggrieved-

(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, or 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. Only when a new or important matter or evidence which was not within the applicant's knowledge or could not be produced by him at the relevant time, the Court has power to grant review. The expression "exercise of due diligence" under Order 47, Rule 1 C.P.C. is referable to a new matter or evidence which was not within his knowledge at the time of arguing the appeal. In this case, the



document was very much available with the review petitioner at the time of filing the second appeal. Merely because a certified copy of the document filed by the appellant before the lower appellate Court was not obtained by him, this Court will not believe that he has no knowledge about the document namely the mortgage deed. When the review petitioner has not even raised a ground challenging the rejection of the petition filed by him for reception of additional evidence, namely, the same mortgage deed, it is not open to him now to seek review of the judgment of this Court on the ground that he could get the additional document from the lower Court only after the pronouncement of the judgment in the Second Appeal. This Court also perused the document namely the mortgage deed which was sought to be produced as additional evidence before the lower appellate Court. The said document does not refer to the Will under Ex.B7. Merely because the review petitioner has executed the mortgage claiming exclusive title to the property in the mortgage deed it cannot be contended that the Will alleged to have been executed by his father under Ex.B7 is proved. Hence, the mortgage deed is not relevant to establish the due execution of the Will under Ex.B7. Hence, this Court find no merit in the review petition and hence, this Review Petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

1.The Subordinate Judge,
Sankarankovil

2.The District Munsif,
Sankarankovil

Copy to:-

The Section Officer, V.R.Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai

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RL/5C/4P/KKR/SAR3/8/2/2018