



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2017

CORAM

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Review Application (MD) No.234 of 2017

in S.A. (MD) No.216 of 2010

M.Sathappan (Died)

S.Laser

...Review Petitioner / 1<sup>st</sup> respondent

Vs.

1.M.Mariolouis

...1<sup>st</sup> Respondent/Appellant

2.Joseph

3.Jeyamary

4.Mangalamary

...Respondents / Respondents 2 to 4

Prayer : Review Application is filed under Section 114 r/w Order 47 Rule 1 of CPC to review the judgment and decree dated 02.12.2016 in S.A. (MD) No.216 of 2010 passed by this Court.

**Prayer in SA(MD). 216/ 2010 :**

To set aside the Judgment and decree dated 20.10.2008 passed in AS.No.227 of 1994 on the file of Principal District Court, Dindigul reversing the judgment and decree passed in O.S.No.1020 of 1992 dated 30.09.1994 on the file of Additional Sub Court, Dindigul and to allow the second Appeal.

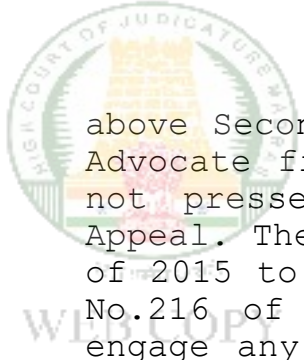
For Petitioner : Mr.M.Sankar

For Respondents : Mr.R.Ramasamy  
for R1

**O R D E R**

This Review Application is filed by the petitioner to review the judgment and decree dated 02.12.2016 in S.A. (MD) No.216 of 2010 passed by this Court.

2. The review petitioner is the first respondent in S.A. (MD) No.216 of 2010 and second defendant in O.S.No.1020 of 1992. The first respondent is the appellant in S.A. (MD) No.216 of 2010 and plaintiff in O.S.No.1020 of 1992. The first respondent herein filed O.S.No.1020 of 1992 on the file of Additional Sub Court, Dindigul against one M.Sathappan who is now dead and petitioner and respondents 2 to 4 in the Second Appeal. The said suit was decreed. The first respondent herein filed A.S.No.227 of 1994 on the file of District Court, Dindigul. The said appeal was allowed. Against the said judgment and decree, the first respondent herein filed the

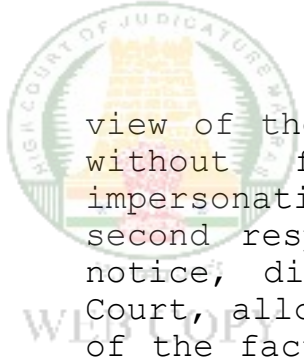


above Second Appeal. When the Second Appeal was pending, one Ravi, Advocate filed change of vakalat and withdrew the Second Appeal as not pressed. This Court on 17.09.2014, dismissed the Second Appeal. The first respondent then filed application in M.P.(MD) No.1 of 2015 to set aside the order dismissing the Second Appeal, SA(MD) No.216 of 2010 on the ground that the first respondent did not engage any Advocate by name Ravi and did not instruct to withdraw the Second Appeal and the counsel for first respondent also did not give change of vakalat to engage other counsel.

3. This Court, by order dated 26.10.2015 allowed the said M.P.No.1 of 2015 on the ground that there is no Advocate by name Ravi and restored the Second Appeal to file. After restoration, the court bundle was missing and this Court directed the Registry to re-construct the bundle. After re-construction, the Second Appeal was posted for hearing. When the Second Appeal was taken up for hearing, this Court found that one Marimuthu and Jothibas, Advocates entered appearance on behalf of Review Petitioner. There was no representation on behalf of the Review Petitioner and others. Registry has noted that there is no vakalat filed on behalf of the Review Petitioner and other respondents in Second Appeal. This Court, by order dated 28/11/2016 directed the Registry to print the name of the Advocates G.Marimuthu and Jothibas alongwith the names of the Review Petitioner and respondents 2 to 5 and adjourned the matter to 30.11.2016. On that day, Mr.N.Kumaravelu, Advocate represented M/s.M.Marimuthu & Jothibas and sought for adjournment. This Court adjourned the matter to 01.12.2016. On 01.12.2016, Mr.M.Jothibas appeared and informed this Court that after dismissal of the appeal, he has handed over the bundle to the Review Petitioner. This Court directed the Registry to post the matter on 02.12.2016 by printing the names of the Review Petitioner and other respondents. On 02.12.2016, this Court heard the learned counsel appearing for the first respondent herein/appellant in Second Appeal, perused all the materials on record and judgments of the courts below and allowed the Second Appeal.

4. Now, the Review Petitioner has come out with the present Review Petition to review the decree and judgment dated 02.12.2016 made in SA (MD) No.216 of 2010.

5. The contention of the review petitioner is that this Court, ought to have ordered notice to the Review Petitioner and other respondents in the Second Appeal and to the Advocate who appeared for them in the First Appeal. By failing to issue notice, this Court has committed an error. This contention of the learned counsel for the Review Petitioner is without any merits. This Court ordered notice to the review applicant and other respondents in Second Appeal in M.P.No.1 of 2015, filed by the first respondent to set aside the order of the Second Appeal in S.A. (MD) No.216 of 2010, dismissed as withdrawn on 17.09.2014. The notice was served on the review applicant and respondents 3 and 4 in M.P.No.1 of 2015. Notice sent to the second respondent was returned as "unserved". In



view of the fact that the Second Appeal was dismissed as withdrawn without first respondent's knowledge, instruction and by impersonation, this Court held that no notice need be sent to the second respondent. The review petitioner and others, even after notice, did not appear and contest the M.P.No.1 of 2015. This Court, allowed M.P.No.1 of 2015 and restored second appeal. In view of the fact that the review applicant and others were aware of the petition to set aside the order dismissing the second appeal as withdrawn, there was no necessity to send the notice again to review petitioner and others, when the second appeal was taken up for final hearing.

6. From the records, it is seen that on 30.11.2016, the names of the Advocate who appeared for Review Petitioner herein was printed alongwith the names of the other respondents in the Second Appeal. Mr.N.Kumaravelu, Advocate for Review Petitioner sought adjournment and this Court adjourned the matter to 01.12.2016. On 01.12.2016, Mr.Jothibas, counsel on record informed this Court that he is no longer appearing for the Review Petitioner and he has handed over the bundle to the Review Petitioner. This Court adjourned the matter to 02.12.2016. When the matter was taken up for hearing on 02.12.2016, the names of the Review Petitioner and other respondents were printed in the cause list.

7. From the above facts, it is seen that the Second Appeal was in the cause list from 25.11.2016 and counsel who appeared for the Review Petitioner ought to have informed the Review Petitioner and the Lower Court Advocate. Already notice was served on the Review Petitioner and other respondents and the Review Petitioner entered appearance through Advocate. In M.P.No.1 of 2015, notice was served on the Review Petitioner and he did not appear and contest. In view of the above facts, there is no necessity to issue fresh notice to the Review Petitioner or to the counsel who appeared before the Lower Court.

8. The next contention of the learned counsel for the Review Petitioner is that this Court had not considered the documents filed on behalf of the Review Petitioner and delivered the judgment based on the documents exhibited on behalf of the first respondent herein. This contention is not correct. This Court considered all the materials on record, especially the judgments of the courts below and set aside the judgment of the Lower Appellate Court and restored the judgment of the Trial Court. There is no error apparent in the said order warranting interference by this Court to review the same.

9. In the result, this Review Application is dismissed. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar



To

1.The Principal District Judge,  
Dindigul.

2.The Additional Subordinate Judge,  
Dindigul.

RGR

JS/KP/SAR.4/8.12.2017/4P-3C

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