

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.06.2018

PRONOUNCED ON:07.06.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

Review Application No.29 of 2017

in

S.A.No.686 of 2011

Ayyasamy

... Applicant

Vs.

1.Gopal

2.C.Raji

3.Periasamy

... Respondents

Prayer:

Review Application is filed under Order 47 Rules 1 & 2 read with Section 114 of the Code of Civil Procedure against the judgment and decree dated 25.01.2017 in S.A.No.686 of 2011.

For Applicant : Mr.P.Valliappan

ORDER

The Review Application is preferred to review the judgment and decree dated 25.01.2017 passed in S.A.No.686 of 2011.

2.Second Appeal No.686 of 2011 is directed against the judgment and decree dated 11.04.2011 passed in A.S.No.27 of 2009 on the file of the Subordinate Court, Harur confirming the judgment and decree dated 21.02.2003 passed in O.S.No.28 of 1998 on the file of the District Munsif Court, Harur.

3.The suit has been laid by the plaintiffs for permanent injunction. The suit property is found to be Mandaiveli land and as regards the same, it is the case of the plaintiffs that the same has been used by the villagers for various purposes as detailed in the plaint and also during the festival occasions. As regards the identity of the suit property and the description thereof, from the evidence adduced in the matter, more particularly from the evidence adduced by the defendant examined as D.W.1, it has been noted that the suit property is a Mandaiveli land situated in Survey No.253/9 in Mottankurichi village and the same is situated to the east of the land

purchased by the defendant in Survey No.249/5. Similar is the evidence of the Village Administrative Officer, who has been examined as D.W.2. Accordingly, this Court has noted and held that the suit property is only a Mandaiveli land belonging to the Government and located to the east of the property acquired by the defendant in Survey No.249/5 and located in Survey No. 253/9. Further, this Court also on the materials placed, held that the suit property being a Mandaiveli land is used by the villagers for various purposes.

4.On the basis of the evidence adduced in the matter, it has been held by this Court that the defendant cannot claim any exclusive title, possession and enjoyment of the suit property which is a Mandaiveli land. Accordingly, it is found that the defendant has not placed any material as such to sustain his claim of exclusive possession, title to the suit property.

5.The plea has been taken by the defendant that in respect of the suit property, earlier litigations had been preferred in O.S.No.55 of 1995 and O.S.No.156 of 1993. However, on the basis of the materials available, this Court has held that the property involved in the above suits do not pertain to the suit property which is a Mandaiveli land and

accordingly determined the issues with reference to the same. Further, this Court has also noted that the defendant has not in specific, raised the plea of *resjudicata* and accordingly it has been held by this Court that Courts below are justified in not dismissing the suit laid by the plaintiffs on the principle of *resjudicata*.

6. Holding that the suit property is only a Maindaiveli land belonging to the Government and used by one and all for various purposes and the defendant on the footing that the suit property is located adjacent to his property is found to be not entitled to encroach into the same and put up construction and accordingly the Court holding that the suit property being the Mandaiveli land intended for the public usage, accordingly, determined that the defendant is not entitled to put up the construction over the same and accordingly upheld the grant of the relief of permanent injunction decreed by the Courts below in favour of the plaintiffs. Resultantly, the Court had dismissed the Second Appeal preferred by the defendant.

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7. In this Review Application, the same points which had been urged during the course of hearing of the Second Appeal have been raised by the applicant's counsel and when it is found, as above

discussed, that the said points had been carefully analyzed and determined against the defendant and the same are found to be based on the materials available on record, it is found that the Review Application as such is not maintainable. When the applicant has not made out or projected any mistake or error apparent on the face of the record or any other sufficient reason for reviewing the judgment in question and when further it seen that none of the ingredients contemplated/outlined by the Apex Court in the decision reported in **2013 (8) SCC 320 [Kamlesh Verma Vs. Mayawathi and Others]** has been made out by the applicant's counsel, in my considered opinion, the Review Application does not stand scrutiny in the eyes of law and is liable to be rejected.

8. In view of the above said reasons, the Review Application is found to be devoid of merits and accordingly dismissed. Consequently, connected miscellaneous petition if any is closed.

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Index:yes/No

Internet:yes/No

T.RAVINDRAN, J.

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Pre-delivery order made in
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