

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.06.2018

PRONOUNCED ON : 06.06.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Review Application No.88 of 2017

in

S. A.No.474 of 2011

Seethammal

... Review petitioner

Vs.

1. Mathammal
2. Vasantha
3. Minor Moorthy
S/o. Mathappan
4. Minor Malarkodi
D/o. Mathappan
Minors are rep.by NF and mother,
2nd respondent Vasantha
Pachiammal (Died) (Lr's already on record)
Mathappan (Died) (Lr's already on record)
5. Thimmaraj
6. Muniraj
- 7.Thekkan @ Devaraj
- 8.Ellappa
9. Rajammal
10. Susila

... Respondents

(Respondents 5 to 10 remained exparte
in both O.S. and in A.S.)

Prayer :- The Review Application has been filed under Order 47 Rules 1 & 2 read with Section 114 of C.P.C to review the judgment and decree dated 01.12.2016 passed in S.A.No.474 of 2011.

For Review petitioner : Mr.S.C.Viswanath

ORDER

The review petition is directed against the judgment and decree dated 01.12.2016 passed in S.A.No.474 of 2011.

2. Second appeal No.474 of 2011 is directed against the judgment and decree of the Court of Subordinate Court, Dharmapuri, in A.S.No.44/2008 dated 19.11.2010 reversing the judgment and decree dated 04.04.2007, passed in O.S. No.144 of 1996, on the file of the District Munsif Court, Palacode.

3. The suit has been laid by the review petitioner/plaintiff for the reliefs of declaration, permanent injunction and possession.

4. The review petitioner claims title to the A schedule property based upon the settlement deed dated 15.02.1969 said to have been executed by her husband in her favour which has been marked as Ex.A1. The same has been challenged by the defendants. This Court

has found that though the husband of the review petitioner has acquired the A schedule property under the partition deed dated 31.01.1966, on a perusal of the materials placed on record came to the conclusion that the entire extent derived by the husband of the review petitioner has not been settled under Ex.A1 in favour of the review petitioner and it has been found that by virtue of Ex.A1 settlement deed only an extent of one acre has been settled upon the review petitioner. This Court has also found that the property which has been settled in favour of the review petitioner has also not been clearly detailed in the settlement deed Ex.A1 and held that from Ex.A1, the review petitioner is unable to identify the actual property settled in her favour. Accordingly, this Court has held that the review petitioner has failed to establish that the settlement deed had been duly executed by her husband in her favour in respect of the suit A schedule property as claimed by her and further, this Court has also held that the review petitioner has failed to establish that the property settled on her is in her possession and enjoyment. This Court has also held that the review petitioner has also failed to establish her possession and enjoyment of the A schedule property or for the matter, the actual property settled in her favour by way of Ex.A1. Based on the abovesaid conclusion, this Court has discountenanced the plea of the review petitioner that her husband has no saleable interest in the property acquired by him under the partition deed dated 31.01.1966 after Ex.A1 settlement deed and accordingly found that

the review petitioner's husband had alienated an extent of 1 acre of land in the suit survey number under the sale deed dated 27.10.1969, marked as Ex.B1. Accordingly, this Court further noted that the review petitioner has failed to establish that the A schedule property had been settled in her favour by her husband by way of Ex.A1 and further holding that the review petitioner has failed to establish the actual property said to have been settled in her favour by her husband under Ex.A1, as she has failed to identify the said property by giving the particulars of the boundaries within which the same is comprised of and accordingly this Court held that the review petitioner has failed to establish her case for entitling her to seek the reliefs sought for in the matter. Accordingly concurred with the judgment and decree of the first appellate Court and resultantly, dismissed the second appeal.

5. In this review petition, the only point that has been argued by the counsel appearing for the review petitioner is that the review petitioner having been held to be entitled for the one acre of land in the suit survey number, this Court should have granted the appropriate relief in her favour in the second appeal and accordingly the need for reviewing the judgment. However, as above discussed, the review petitioner has failed to establish the actual property settled by her husband in her favour by placing acceptable and reliable materials and when her case that her husband has settled the entire A schedule property falls to the ground and her further case that her

husband has no saleable interest thereafter i.e., following Ex.A1 is unacceptable, accordingly this Court taking into consideration the materials placed on record, dismissed the second appeal as devoid of merits.

6. In the light of the above factors, in my considered opinion, none of the parameters outlined in the decision of the Apex Court reported in **(2013) 8 SCC 320 (Kamlesh Verma Vs. Mayawati and others)** is available to the petitioner for entitling her to review the judgment in question. Hence, I do not find any merits to accept the review petition.

7. In conclusion, the review petition is found to be devoid of merits and accordingly dismissed. Consequently, connected miscellaneous petition, if any, is closed.

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06.06.2018

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Index : Yes/No

Internet:Yes/No

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T.RAVINDRAN,J.

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Pre-delivery Order in
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