

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2018

PRONOUNCED ON : 02.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Review Application No.91 of 2017

in

S.A.No.220 of 2011

Venkatanaicker Trust
Rep.by its Manager
E.V.K.S.Elangovan

...

Applicant

Vs.

1. V.Chandrasekaran
2. V.Rajendran
3. Sarojini
4. Subadhra
5. Sonia

...

Respondents

Prayer :- The Review Application has been filed under Order 47 Rules 1 & 2 read with Section 114 of C.P.C against the judgment and decree of this Court dated 29.11.2016 in S.A.No.220 of 2011.

For Applicant

: Mrs.Hema Sampath,
Senior Counsel
for Mr.P.Valliappan

ORDER

Seeking review of the Judgment and decree dated 29.11.2016 passed in second appeal No.220 of 2011, the present review application has come to be laid by the applicant/first respondent.

2. Second appeal No.220 of 2011 has been preferred impugning the judgement and decree dated 02.09.2010 passed in A.S.No.71 of 2009 on the file of the Principal Subordinate Court, Erode, confirming the judgment and decree dated 14.09.2009 passed in O.S.No.316 of 1997 on the file of the Second Additional District Munsif Court, Erode.

3. The second appeal had been admitted and the following substantial questions of law were formulated for consideration in the second appeal:

" (a) Whether the termination of tenancy by the issuance of Ex.B1, notice by the Manager is not in accordance with the provisions of the Indian Trust Act and Whether the said notice took equity as ineffective?

(b) Whether the suit filed by the Manager of the Trust and not by the Trustees joined together, is not maintainable?"

4. Following the submissions made by the respective parties, this Court finding that the main points involved in the second appeal being as to whether the suit laid by the Manager of the Trust and not by the Trustees joined together is or is not maintainable and further, whether the notice of termination of the tenancy issued by the Manager marked as Ex.B1 is or is not in accordance with the provisions of the Indian Trust Act and whether the said notice took equity as ineffective and finding that the issue /point as regards the frame of the suit by the applicant trust represented by its Manager is not maintainable had been canvassed before the Courts below and however, as the Courts below did not entertain the same, accordingly, based upon the above said substantial questions of law formulated in the matter, considering the full bench decision of Gujarat High Court reported in **AIR 1973 Gujarat 113 (Atmaram Vs. Gulamhusein)** and accordingly, finding that the full bench, following the decision of the apex Court reported in **AIR 1963 SC 309 (Abdul Kayum V. Alighai)** and also noting that the full bench has also placed reliance upon the decision of our High Court reported in **AIR 1938 Madras 982 (Vedakannu Vs. Annadana Chatram)** and further, relying upon the decision of the Delhi High Court reported in **AIR 1984 Delhi 145 (Duli Chand Vs. Mahabir Pershad Trilok Chand Charitable Trust, Delhi)**, which had also taken into consideration, the full bench decision of the Gujarat, High Court adverted above, finally, following the principles of law adumbrated in the above said decisions,

determined that the suit laid by the plaintiff/applicant trust is not maintainable and as such, the applicant would not be entitled to seek and obtain the reliefs sought for in the main suit and accordingly, set aside the judgement and decrees of the Courts below and thereby, dismissed the suit laid by the applicant/plaintiff and accordingly, allowed the second appeal.

5. In the light of the above decisions, when it is found that the frame of the suit itself was put in question before the Courts below, the contention put forth by the learned Senior counsel appearing for the applicant that the maintainability of the suit was not put in issue before the Courts below as such cannot be readily accepted. On the other hand, inasmuch as the said point was put in issue and canvassed by the respective parties one way or the other, accordingly, it is seen that the same had been also discussed by the Courts below. However, the Courts below, finally determined that the suit framed by the applicant Trust is maintainable. Accordingly, it is found that at the time of admission of the second appeal also, the substantial questions of law formulated had been determined touching upon the above said aspects of the case and in such view of the matter, the contention put forth in the review application that the maintainability of the suit was not at all questioned by the respondent as such before the Courts below does not merit acceptance.

6. The further argument put by the learned Senior Counsel appearing for the applicant that the respondents herein had preferred incidental proceedings in the matter against the applicant trust represented by its Manager and also obtained various reliefs with reference to the same and in such view of the matter, the respondents cannot be allowed to turn around and contend that the suit laid by the applicant trust is not maintainable and so, it is contended by the learned Senior Counsel that on the above ground itself, the review application is maintainable and requires to be considered. However, the said point had already been canvassed in the second appeal and found to be negatived. In such view of the matter, the repetition of overruled contention cannot be allowed to be raised in the review application once again.

7. It is also argued that while this Court had come to the conclusion that the suit as framed is not maintainable, on the determination of the said point against the applicant trust, should have remitted the matter back to the Courts below for the determination of the said issue afresh and this Court having not followed the above said procedure, according to her, the review application on that ground should be entertained. However, this Court, while disposing of the second appeal, discussed the authorities relied upon by the counsel for the

applicant trust and finding that the same are not applicable to decide the substantial questions of law formulated for consideration in the second appeal and further, noting that inasmuch as the very frame of the suit laid by the applicant trust represented by its Manager was not maintainable as per law, did not deem it fit to remit the matter back to the Courts below and in such view of the matter, the contention put forth that the matter should have been remitted back to the trial Court and so, the review application, on that ground would lie also, cannot be accepted.

8. In the light of the above position, it is found that by way of this review application, only an attempt has been made for reviving the old and overruled contentions already put forth during the course of the second appeal, which were negated and when it is found that the review proceedings cannot be equated with the original hearing of the case and when it is further seen that the review application is not maintainable unless there is a manifest error or mistake apparent on the face of the record or any other new and important matter or evidence which was not within knowledge of the applicant or could not be produced by it, had been discovered subsequently or for any other sufficient cause, it is found that by way of the review application, the applicant cannot be allowed to reagitate the issue already determined and when it is further seen that the contentions put forth by the review applicant had already been made at the time of hearing the main matter and been negated,

the review application, as such, cannot be entertained. In this connection, a useful reference may be made to the decision of the apex Court reported in **(2013) 8 Supreme Court Cases 320 (Kamlesh Verma Vs. Mayawati and others)**, wherein, the principles relating to review jurisdiction had been summarised as follows:

" The principles relating to review jurisdiction may be summarised as follows:

When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him.

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in Chhajju Ram, (1921-22) 49 IA 144 and approved by this Court in Moran Mar Basselios Catholicos, AIR 1954 SC 526 to mean " a reason sufficient on grounds at least analogous to those specified in the rule".

When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."

9. In the light of the above principles enunciated by the apex Court and when the contentions now put forth by the applicant for entertaining the review application had already been canvassed, when the main matter was heard and disposed of, negating the same, in my considered opinion, the review application does not merit acceptance.

10. In the light of the above discussions, the decisions relied upon by the applicant's counsel reported in **2012-1-L.W.530 (Sambandam (died) and 7 others Vs. Nataraja Chettiar and two others), 2003 (3) CTC 209 (Kishorelal Asera Vs. Haji Essa Abba Sait Endowments, rep.by its Trustees, Ibrahim Sait and others), 1993 Supp (2) Supreme Court Cases 518 (Pathan Murtazakhan**

Daddmkhan and others Vs. Pathan Pirkhan Amdumiyan (Dead) By Irs, (2002) 9 Supreme Court Cases 608 (Sakhahari Parwatrao Karahale and another Vs. Bhimashankar Parwatrao Karahale) 1992 Supp (1) Supreme Court Cases 712 (Ramaswamy Kalingaryar Vs. Mathayan Padayachi) (1984) 4 Supreme Court Cases 343 (Chhotelal Pyarelal, The Partnership Firm and others Vs. Shikarchand), 1992 (1) MLJ 109 (T.Palaniswamy Gounder Vs. A.V.G.Ponnuswamy Chettiar and others) are found to be not germane for the disposal of the review application as the same are projected for reviving the contentions already put forth at the time of the hearing of the second appeal.

11. At the end, the review application is found to be devoid of merits and does not satisfy the ingredients contained in Order 47 Rule 1 of CPC and accordingly, the same is dismissed.

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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
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