

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.06.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Rev.Appln.No.85 of 2018 & S.A.No.315 of 2009

V.Ramasamy ... Applicant

Vs.

1 M.Ramanathan
2 V.Natarajan
3 Kumar
4 N.Sivakumar
5 Saraswathi Ammal
6 Premavathi ... Respondents

Prayer: Review Application filed under Order 47 Rule 1 and 2 of C.P.C. praying to review the judgment and decree of this Court in S.A.No.315 of 2009 dated 16.02.2017 and thereby confirm the decree and judgment of the learned 1st Additional Subordinate Judge, Villupuram in A.S.No.212 of 2003 dated 28.01.2009 in so far as items 6 and 8 of the A schedule suit properties are concerned.

For Applicant : Mr.N.Suresh

For Respondents : Mr. Sarath

For M/s.V.Raghavachari

ORDER

Heard the learned counsel for the first respondent, who has filed a review petition seeking indulgence of this Court to review the judgment dated 16.02.2017 passed by this Court in S.A.No.315 of 2009.

2 The suit filed for declaration and possession in respect of 17

items of properties in 'A' schedule and 2 items of properties under 'B'

schedule. The trial Court has passed a decree in favour of plaintiff in respect of item Nos. 2 and 4 in 'A' schedule properties alone.

3 Aggrieved by that the plaintiff has preferred first appeal and the first appellate Court has modified the trial Court decree including item Nos.1, 6, 8 and 17 under 'A' schedule, in addition to item Nos. 2 and 4. The trial Court has passed a decree in favour of the plaintiff in respect of item No.1 of 'B' schedule property. In the second appeal preferred by the first defendant in respect of item No. 17 in 'A' schedule and item Nos.1 and 2 of the 'B' schedule property, this Court has allowed the second appeal vide order dated 16.02.2017.

4 By way of review petition the 2nd plaintiff who is the 1st respondent in the second appeal seeks inclusion of item Nos.6 and 8 of 'A' schedule properties in the decree since, no second appeal was preferred in respect of these two items of properties therefore, the first Appellate Court decree modifying the Trial Court decree has attained finality.

5 The apprehension of the review petition is that the trial Court has passed decree in his favour in respect of items 2 and 4 of 'A' schedule, whereas the first appellate Court has modified the Trial Court decree and allowed the suit in respect of entire suit properties mentioned in schedule 'A' and 'B', which includes item Nos. 6 and 8 of 'A' schedule. No appeal was

preferred in respect of these two items. In the second appeal item No. 17 of 'A' schedule property and item Nos.1 and 2 alone was the subject matter. Therefore, ambiguity in the judgment in paragraph 14 clause (d) requires clarification.

6 On notice, the learned counsel appearing for the appellant/respondent in the review petition appeared and fairly conceded that as far as item Nos.6 and 8 of 'A' schedule properties they have no claim and they have not preferred any second appeal in respect of these two items. In the light of the above facts, on perusal of records and the judgment under review also goes to show that the second appeal and cross appeal is preferred against the modified decree of the first Appellate Court only in respect of item No.17 of 'A' schedule and item Nos. 1 and 2 of 'B' schedule properties. Therefore, it is made clear that the decree passed by the first Appellate Court in respect of item Nos.6 and 8 of 'A' schedule properties stands unaltered in view of finality reached by the first Appellate Court.

7 With these above modification, the Review Petition is disposed of.

08.06.2018

Internet : Yes

rpl

Dr.G.JAYACHANDRAN,J.

rpl

To

The 1st Additional Subordinate Judge,
Villupuram.



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