

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Review Application No.159 of 2011
in CRP (PD) No.4498 of 2010

Jaya @ Jayalakshmi ... Petitioner

Vs.

S.Padma @ Padmavathi ... Respondent

PRAYER : Review Application filed under Order 47 Rules 1 &2 r/w
Section 114 of CPC to review the order of this court dated
22.02.2011 in CRP (PD) No.4498 of 2010.

For Petitioner : Mr.S.Parthasarathy
Senior Counsel for
Mr.P.Valliappan

For Respondent : Mr.V.K.Vijayaraghavan

ORDER

This Review Application has been filed to review the order of
this court dated 22.02.2011 in CRP (PD) No.4498 of 2010.

2. The review petitioner is the petitioner in CRP No.4498 of 2010 and defendant in O.S.No.25 of 2009 on the file of Principal District Court, Namakkal. In the said suit, respondent filed I.A.No.57 of 2009 to send for the document, i.e. Gift settlement deed dated 10.10.2008 executed by the father of the plaintiff/respondent herein. The said application was allowed exparte as the learned counsel for the petitioner did not appear. The petitioner filed I.A.No.268 of 2009 to set aside the exparte order dated 10.08.2009 in I.A.No.57 of 2009, to receive the counter in the same and hold an enquiry. The petitioner also filed I.A.No.269 of 2009 to recall the order dated 10.08.2009 passed in I.A.No.57 of 2008. Both I.A.Nos.268 & 269 of 2009 in O.S.No.25 of 2009 were dismissed on 18.08.2010. Challenging the the order passed in I.A.Nos.268 & 269 of 2009, the petitioner filed CRP (PD) Nos.4498 & 4496 of 2010 respectively before this Court.

3. CRP (PD) No.4496 of 2010 was dismissed by this Court on 22.02.2011 on the ground that the petitioner has filed two applications viz. I.A.No.269 of 2009 to recall the order made in I.A.No.57 of 2009 and I.A.No.268 of 2009 to set aside the order

made in I.A.No.57 of 2009. CRP (PD) No.4498 of 2010 was dismissed by this Court on 22.02.2011 holding that in view of the order passed in CRP (PD) No.4496 of 2010 and in view of the fact that the document which has been sent for at the instance of the respondent/plaintiff has already reached the court and it is in the custody of court, no further order is required in the revision.

4. Against the said order of dismissal made in CRP (PD) Nos.4496 & 4498 of 2010, the petitioner filed SLP (Civil) Nos.16424 & 16425 of 2011. However, the petitioner withdrew both the SLPs filed by her in order to file review petition before this Court. The Hon'ble Apex Court, by order dated 11.07.2011 dismissed both the SLPs as withdrawn granting leave to file review petition.

5. The petitioner has come out with the present review application to review the order of this court dated 22.02.2011 in CRP (PD) No.4498 of 2010.

6. The learned Senior Counsel for the petitioner contended that even if the document sent for have reached the Court before revision petition challenging the said order is disposed of, it will not

prevent the superior court from testing the correctness of the order impugned.

7. On the other hand, the learned counsel for the respondent contended that the order sought to be reviewed is only a consequential order. CRP (PD) No.4498 of 2010 was dismissed in view of the dismissal of CRP (PD) No.4496 of 2010 and that document sent for had already reached the court. The petitioner has not filed any review application to review the order passed in CRP (PD) No.4496 of 2010. The power of the court to review the order is very limited and petitioner is not entitled to argue the case on merits.

8. The learned counsel for the respondent relied on the judgments reported in **1998 (1) L.W. 106 [Parsion Devi & Ors. v. Sumitri Devi & Ors.]** and **2006 (1) CTC 161 [The Govt. of Tamil Nadu v. Registration Department SC/STC and MBC Employees General Welfare Sangam]** in support of his contention.

9. Heard the learned Senior Counsel for the petitioner as well as learned counsel for the respondent and perused the materials available on record.

10. From the materials available on record, it is seen that the document sent for had reached the court before I.A.Nos.268 & 269 of 2009 were heard and dismissed. The learned Judge has recorded the said fact. In spite of the same, the review petitioner has not challenged the order dated 10.08.2009 passed in I.A.No.57 of 2011. The judgment of this Court dated 10.11.2017 made in **AS (MD) No.32 of 2001 [R.Rajaraman v. R.Surendran and 9 others]** relied on by the learned Senior Counsel for the petitioner, is not applicable to decide the review application.

11. The contention of the learned Senior Counsel for the petitioner is that even if document has reached the court, the order of the court to send for document can be challenged in the revision and court is not prevented from testing the order impugned. The petitioner has not challenged the order for sending the document in I.A.No.57 of 2009. On the other hand, he has challenged the orders

dismissing applications to set aside the order made in I.A.No.57 of 2009 and application to recall the said order.

12. Considering the fact that already document had reached the court and the same is in the court custody and the CRP (PD) No.4496 of 2010 challenging the order dated 18.08.2010 made in I.A.No.269 of 2009 to recall the order dated 10.08.2009 made in I.A.No.57 of 2009 was already dismissed, CRP (PD) No.4498 of 2010 was dismissed by order dated 22.02.2011. I do not find any error apparent on the face of record in the order of this court dated 22.02.2011 made in CRP (PD) No.4498 of 2010.

13. In the result, the Review Application is dismissed. No costs.

सत्यमेव जयते

22.02.2018

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Index : Yes/No

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V.M.VELUMANI, J.

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